

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

COMMERCE AND TOURISM

Senator Montford, Chair

Senator Gainer, Vice Chair

MEETING DATE: Monday, April 3, 2017

TIME: 1:30—3:30 p.m.

PLACE: *Toni Jennings Committee Room, 110 Senate Office Building*

MEMBERS: Senator Montford, Chair; Senator Gainer, Vice Chair; Senators Gibson, Hutson, Latvala, Passidomo, Rodriguez, and Young

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 166 Regulated Industries / Steube (Compare CS/H 141)	Alcoholic Beverages; Providing that the ownership, management, operation, or control of up to three vendor's licenses for the sale of alcoholic beverages by a designated Florida Craft Distillery is not prohibited under specified laws; requiring the Division of Alcoholic Beverages and Tobacco to issue permits to designated Florida Craft Distilleries to conduct certain tastings and sales; specifying authorized products for sale by craft distilleries; permitting craft distilleries to retain and renew a vendor's license under specified circumstances, etc. RI 02/08/2017 Fav/CS CM 04/03/2017 Fav/CS AGG AP	Fav/CS Yeas 6 Nays 1
2	SB 490 Perry	Tax on Sales, Use, and Other Transactions; Providing an exemption from the sales and use tax for the sale of certain clothing, wallets, bags, school supplies, and personal computers and related accessories during a specified period, etc. CM 04/03/2017 Favorable AFT AP	Favorable Yeas 5 Nays 0
3	CS/SB 1040 Regulated Industries / Artiles (Compare CS/H 853)	Malt Beverages; Authorizing a distributor of malt beverages to give or sell specified glassware to vendors licensed to sell malt beverages for on-premises consumption, etc. RI 03/21/2017 Fav/CS CM 04/03/2017 Favorable RC	Favorable Yeas 6 Nays 1

COMMITTEE MEETING EXPANDED AGENDA

Commerce and Tourism

Monday, April 3, 2017, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/SB 1136 Agriculture / Lee (Similar H 1233)	Cottage Food Operations; Increasing the annual gross sales limitation for exempting cottage food operations from certain food and building permitting requirements; authorizing cottage food products to be advertised, sold, and paid for over the Internet; requiring such products to be delivered in person directly to the consumer or to a specific event venue, etc. AG 03/21/2017 Fav/CS CM 04/03/2017 Favorable RC	Favorable Yeas 5 Nays 0
5	SB 1482 Garcia (Similar H 885)	Transactions with Foreign Financial Institutions; Requiring financial institutions maintaining correspondent or payable-through accounts with certain foreign financial institutions to report and certify specified information to the Office of Financial Regulation, etc. BI 03/27/2017 Favorable CM 04/03/2017 Favorable RC	Favorable Yeas 5 Nays 0
6	SB 1620 Powell (Similar CS/H 1347)	Deceptive and Unfair Trade Practices; Specifying that the Florida Deceptive and Unfair Trade Practices Act does not apply to credit unions regulated by the Office of Financial Regulation or federal agencies, etc. BI 03/27/2017 Favorable CM 04/03/2017 Favorable RC	Favorable Yeas 7 Nays 0
7	CS/SB 388 Regulated Industries / Hutson (Identical CS/H 423)	Beverage Law; Providing an exemption from provisions relating to the tied house evil for specified financial transactions between a manufacturer of beer or malt beverages and a licensed vendor; providing conditions for the exception, etc. RI 03/15/2017 Fav/CS CM 04/03/2017 Favorable RC	Favorable Yeas 7 Nays 0
8	CS/SB 1348 Regulated Industries / Young (Similar CS/H 987)	Public Accountancy; Providing an exemption to the requirement for licensure of certain firms without an office in the state; providing that suspension or revocation of the right to practice before the Public Company Accounting Oversight Board is grounds for the imposition of penalties as provided by law, etc. RI 03/21/2017 Fav/CS CM 04/03/2017 Favorable RC	Favorable Yeas 7 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Commerce and Tourism

Monday, April 3, 2017, 1:30—3:30 p.m.

TAB	OFFICE and APPOINTMENT (HOME CITY)	FOR TERM ENDING	COMMITTEE ACTION
Senate Confirmation Hearing: A public hearing will be held for consideration of the below-named executive appointment to the office indicated.			
Board of Directors, Enterprise Florida, Inc.			
9	Deen Hartley, Sonya (Ft. Lauderdale)	09/30/2019	Recommend Confirm Yeas 5 Nays 0
10	Keiser, Belinda (Parkland)	09/30/2019	Recommend Confirm Yeas 5 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
Other Related Meeting Documents			

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: CS/CS/SB 166

INTRODUCER: Commerce and Tourism Committee, Regulated Industries Committee, and Senator Steube and others

SUBJECT: Alcoholic Beverages

DATE: April 3, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>McSwain</u>	<u>RI</u>	Fav/CS
2.	<u>Askey</u>	<u>McKay</u>	<u>CM</u>	Fav/CS
3.	_____	_____	<u>AGG</u>	_____
4.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 166 permits a designated Florida Craft Distillery to:

- Own, manage, operate, or control up to three vendor licenses, even if the manufacturer is licensed as a distributor, for licensed premises situated on property contiguous to the manufacturing premises; and
- Conduct tastings and sales at Florida fairs, trade shows, expositions, and festivals of distilled spirits that it produces, provided it pays all entry fees and has a representative present during the event.

The bill permits a certified Florida Farm Winery or a designated Florida Craft Distillery to transfer wine or distilled spirits produced at the winery or distillery from their federal bonded space or non-bonded space at its licensed premises or storage areas to its vendor-licensed premises or approved sales room. The transfers of wine or distilled spirits must be reported to the Division of Alcoholic Beverages and Tobacco (division) of the Department of Business and Professional Regulation (DBPR) and included in the winery's or distillery's monthly excise tax payment.

Regarding a craft distillery, the bill:

- Increases the maximum number of gallons required to be produced to qualify as a craft distillery from 75,000 to 250,000 gallons per calendar year;

- Provides that a distillery is certified by the division as a “craft distillery” upon the distillery providing written notification of the distillery’s decision to qualify as a craft distillery;
- Permits a craft distillery to have one additional sales room located in the same county as the distillery’s production building, which shall be an extension of the craft distillery’s licensed premises, without requiring a vendor’s license for that additional location;
- Repeals the limitation on the number of individual containers that a craft distillery may sell to consumers;
- Permits a craft distillery that reaches the production qualification limit of 250,000 gallons per calendar year to continue retail sales if the distillery has a vendor’s license for each craft distillery and additional sales room;
- Provides that a craft distillery may retain and renew its vendor’s license(s) if it exceeds the 250,000-gallon production limitation;
- Repeals the prohibition against the transfer of a craft distillery’s license or any ownership interest to any individual or entity with a direct or indirect interest in another distillery licensed in any other state, territory, or country; and
- Permits a craft distillery to conduct tastings of distilled spirits products at the premises of any vendor licensed for the sale of such products by package or for consumption on the premises.

The bill will increase revenue to the Alcoholic Beverage and Tobacco Trust Fund (AB&T TF) by \$62,244. *See* Section V.

The bill takes effect upon becoming law.

II. Present Situation:

In Florida, alcoholic beverages are regulated by the Beverage Law,¹ which regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors.² The division administers and enforces the Beverage Law.³

Three-Tier System

In the United States, the regulation of alcohol since the repeal of Prohibition has traditionally been based upon a “three-tier system.” The system requires separation of the manufacture, distribution, and sale of alcoholic beverages. The manufacturer creates the beverages. The distributor obtains the beverages from the manufacturer and delivers them to the vendor. The vendor (retailer) makes the ultimate sale to the consumer.⁴ Manufacturers may not sell directly to retailers or directly to consumers.

Generally, in Florida, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.⁵ Licensed manufacturers, distributors, and registered exporters are prohibited

¹ Section 561.01(6), F.S., provides that the “The Beverage Law” means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

² *See* s. 561.14, F.S.

³ Section 561.02, F.S.

⁴ Section 561.14, F.S.

⁵ Section 561.14(3), F.S. However, see the exceptions provided in ss. 561.221 and 565.03, F.S.

from also being licensed as vendors.⁶ Manufacturers are also generally prohibited from having an interest in a vendor and from distributing directly to a vendor.⁷

Tied House Evil Prohibitions

The system is deeply rooted in the perceived evils of the “tied house” in which a bar is owned or operated by a manufacturer or the manufacturer exercises undue influence over the retail vendor.⁸ Activities are heavily regulated to prevent a manufacturer or distributor from having a financial interest, directly or indirectly, in the establishment or business of a licensed vendor.

Three-Tier System Exceptions

Exceptions to the three-tier regulatory system permit in-state wineries,⁹ breweries,¹⁰ and craft distilleries to sell directly to consumers.¹¹ Restaurants licensed as vendors (brew pubs) may manufacture a limited quantity of malt beverages and sell directly to consumers for consumption on the licensed premises of a restaurant.¹²

A winery, even if licensed as a distributor,¹³ may be licensed as a vendor for a licensed premises situated on property contiguous to the manufacturing premises of the winery. A winery may not be issued more than three vendor licenses.¹⁴

The division may issue permits for a certified Florida Farm Winery¹⁵ to conduct tasting and sales of its wines at Florida fairs, trade shows, expositions, and festivals. The permit is limited to the length of the event. The certified Florida Farm Winery is required to pay all entry fees and must have a winery representative present during the event.

Distilleries and Craft Distilleries

Section 565.01, F.S., defines the terms “liquor,” “distilled spirits,” “spirituous liquors,” “spirituous beverages,” or “distilled spirituous liquors” to mean “that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced.”

⁶ Section 561.22, F.S.

⁷ Sections 563.022(14) and 561.14(1), F.S.

⁸ Erik D. Price, *Time to Untie the House? Revisiting the Historical Justifications of Washington’s Three-Tier System Challenged by Costco v. Washington State Liquor Control Board*, (June 2004) available at: http://www.lanepowell.com/wp-content/uploads/2009/04/pricee_001.pdf (last visited January 31, 2017).

⁹ See s. 561.221(1), F.S.

¹⁰ See s. 561.221(2), F.S.

¹¹ See s. 565.03, F.S.

¹² See s. 561.221(3), F.S.

¹³ Section 561.14(1), F.S., permits manufacturers to distribute at wholesale to licensed distributors and to no one else within the state, unless authorized by statute.

¹⁴ See s. 561.221(1), F.S.

¹⁵ Section 599.004, F.S., establishes the Florida Farm Winery Program within the Department of Agriculture and Consumer Services. The requirements for certification include that a winery produce or sell less than 250,000 gallons of wine annually and that 60 percent of the wine produced is made from state agricultural products.

A “distillery” is a manufacturer of distilled spirits,¹⁶ and a “craft distillery” is a licensed distillery that produces 75,000 or fewer gallons of distilled spirits per calendar year on its premises. A craft distillery must notify the division in writing of its decision to qualify as a craft distillery.¹⁷

Distilleries and craft distilleries pay the same amount of state license tax. All distilleries engaged solely in the business of manufacturing distilled spirits, or engaged in the business of blending and rectifying¹⁸ distilled spirits must pay a state license tax of \$4,000 for each plant or branch operating in Florida. Persons who engage in the business of distilling spirits may also rectify and blend spirituous liquors without paying an additional license tax.¹⁹

There are 45 distilleries that produced fewer than 75,000 gallons of distilled spirits in 2016.²⁰ The DBPR advises that 23 distilleries have provided the division with written notification that it qualifies as a craft distillery.

Retail Sales by Distilleries

A craft distillery is allowed to sell to consumers branded products²¹ distilled on the licensed premises. The products must be in factory-sealed containers that are filled at the distillery and sold for off-premises consumption.²² The sales must occur at the distillery’s souvenir gift shop located on private property contiguous to the licensed distillery premises, and included on the sketch submitted with the license application.²³ The division must approve any subsequent revisions to a craft distillery’s sketch to verify that the retail location operated by the craft distillery is “owned or leased by the craft distillery and on property contiguous to the craft distillery’s production building.”²⁴ The craft distillery is not required to obtain, in addition to its manufacturer’s license, a vendor’s license in order to sell distilled spirits to consumers.

Sales must be in face-to-face transactions with consumers²⁵ who are making a purchase of no more than:

- Two individual containers of each branded product;
- Three individual containers of a single branded product and up to one individual container of a second branded product; or
- Four individual containers of a single branded product.²⁶

¹⁶ Section 565.03(1)(c), F.S.

¹⁷ Section 565.03(1)(b), F.S.

¹⁸ Merriam-Webster defines rectify as the purification (of alcohol) especially by repeated or fractional distillation, *available at* <http://www.merriam-webster.com/dictionary/rectify> (last visited January 27, 2017).

¹⁹ Section 565.03(3), F.S.

²⁰ See 2017 Agency Legislative Bill Analysis issued by the DBPR for SB 166, dated January 17, 2017 (on file with Senate Committee on Regulated Industries) at page 2.

²¹ Section 565.03(1)(a), F.S., defines “branded product” to mean “any distilled spirits product manufactured on site, which requires a federal certificate and label approval by the Federal Alcohol Administration Act or federal regulations.”

²² Section 565.03(2)(c), F.S.

²³ *Id.*

²⁴ *Id.*

²⁵ Section 565.03(2)(c)4., F.S.

²⁶ Section 565.03(2)(c)1., F.S.

Each container sold must comply with the container limits in s. 565.10, F.S., which prohibits the sale and distribution of distilled spirits in any size container in excess of 1.75 liters or 59.18 ounces.²⁷

A craft distillery must report to the division within 5 business days after it has reached the 75,000-gallon production limit and cease making sales to consumers on the day after it reaches the production limit.²⁸

A craft distillery may not ship, arrange to ship, or deliver distilled spirits to consumers, but may ship, arrange to ship, or deliver distilled spirits to manufacturers of distilled spirits, wholesale distributors of distilled spirits, state or federal bonded warehouses, and exporters.²⁹

A craft distillery may not transfer its license or any ownership interest to any individual or entity with a direct or indirect interest in another distillery licensed in any other state, territory, or country.³⁰ However, a craft distillery may be affiliated with another distillery that produces 75,000 or fewer gallons per calendar year of distilled spirits on its premises or in any other state, territory, or country.³¹

A craft distillery must submit beverage excise taxes on distilled spirits sold to consumers in its monthly report to the division.³²

Vendor Licenses

Section 561.20, F.S., limits the number of alcoholic beverage licenses that may be issued in a county for the sale of distilled spirits, beer, and wine. The number of licenses is limited to one license per 7,500 residents in the county. These limited alcoholic beverage licenses are known as “quota” licenses. New quota licenses are created and issued when there is an increase in the population of a county. The licenses can also be issued when a county initially changes from a county that does not permit the sale of intoxicating liquors to one that does permit their sale. The quota license is the only type of alcoholic beverage license that is limited in number.³³

Section 561.01(11), F.S., defines “licensed premises” to mean:

not only rooms where alcoholic beverages are stored or sold by the licensee, but also all other rooms in the building which are so closely connected therewith as to admit of free passage from drink parlor to other rooms over which the licensee has some dominion or control and shall also include all of the area embraced within the sketch, appearing on or

²⁷ Section 565.03(2)(c)2., F.S.

²⁸ Section 565.03(2)(c)3., F.S.

²⁹ Section 565.03(2)(c)4., F.S.

³⁰ Section 565.03(2)(c)5., F.S.

³¹ Section 565.03(2)(c)6., F.S.

³² Section 565.03(5), F.S. Section 565.12, F.S., requires manufactures and distributors to pay an excise tax on alcoholic beverages, with the tax rate per gallon depending on the percent of alcohol by volume of the beverage. Section 565.13, F.S., requires every distributor selling spirituous beverages within the state to pay the tax to the division monthly on or before the 10th day of the following month.

³³ Section 561.20, F.S.

attached to the application for the license involved and designated as such on said sketch, in addition to that included or designated by general law. The area embraced within the sketch may include a sidewalk **or other outside area which is contiguous to the licensed premises.** When the sketch includes a sidewalk or other outside area, written approval from the county or municipality attesting to compliance with local ordinances must be submitted to the division to authorize inclusion of sidewalks and outside areas in licensed premises. (Emphasis added.)

Alcoholic Beverage Tastings

Section 565.17, F.S., permits licensed distributors of spirituous beverages and vendors to conduct spirituous beverage tastings at any licensed premises authorized to sell spirituous beverages by package or for consumption on premises.

Section 563.09, F.S., permits manufacturers, distributors, and importers of malt beverages, or any contracted third-party agent thereof, to conduct sampling malt beverage tastings on the licensed premises of a vendor authorized to sell alcoholic beverages by the drink for consumption on premises.

Section 564.08, F.S., permits licensed distributors of wine, or any vendor, to conduct wine tastings at any licensed premises authorized to sell vinous or spirituous beverages by package or for consumption on premises.

All alcoholic beverage tastings must be limited to and directed toward the general public of the age of legal consumption.

III. Effect of Proposed Changes:

Licensing Manufacturers as Vendors

The bill amends s. 561.221(1), F.S., to incorporate certified craft distilleries into the current authority provided to certified Florida Farm Wineries. The bill permits a designated Florida Craft Distillery to:

- Own, manage, operate, or control up to three vendor licenses, even if the manufacturer is licensed as a distributor, for licensed premises situated on property contiguous to the manufacturing premises; and
- Conduct tastings and sales at Florida fairs, trade shows, expositions, and festivals of distilled spirits that it produces, provided it pays all entry fees and has a representative present during the event.

The bill references the licensing of a craft distillery as a distributor.³⁴

The bill creates s. 561.221(1)(c), F.S., to permit a designated Florida Farm Winery and a certified Florida Craft Distillery to transfer wine or distilled spirits produced at the winery or

³⁴ Section 561.14(1), F.S., permits distilleries licensed under s. 565.03(2), F.S., to sell and distribute such beverages at wholesale only to other manufacturers and to licensed distributors and to no one else within this state.

distillery out of their federal bonded space or non-bonded space at its licensed premises or storage areas to its vendor's licensed premises or approved sales room. The division must approve the storage areas, provided that each is included in the winery's or distillery's current state tax bond. The transfers of wine or distilled spirits must be reported to the division pursuant to s. 561.55, F.S., and included in the winery's or distillery's monthly excise tax payment. The bill provides a comparable provision in s. 565.03(2)(c)5., F.S., for designated craft distilleries with a vendor's license.

Craft Distilleries

Qualifications

The bill amends s. 565.03(1)(b), F.S., to increase the maximum number of gallons required to qualify as a craft distillery from 75,000 to 250,000 gallons per calendar year. It provides that a distillery is designated by the division as a "craft distillery" upon the distillery providing written notification to the division of its decision to qualify as a craft distillery.

Additional Sales Room

The bill amends s. 565.03(2)(c), F.S., to permit a craft distillery to have one additional sales room located in the same county as the distillery's production building, as an extension of the craft distillery's licensed premises. The bill does not require that the additional sales room be licensed apart from the craft distillery's manufacturer license. It provides that all sketch and diagram revisions require local zoning approval.

Section 565.03(2)(c)6., F.S., permits the craft distillery to include the sales room location in its original license application or by amending its license application on forms prescribed by the division.

Sales Limits

The bill amends s. 565.03(2)(c)2., F.S., to repeal the limitation on the number of individual containers that a craft distillery may sell to consumers. The bill maintains the requirement that sales to consumers must be in face-to-face transactions without quantity limitations.

Sales after Production Limit is Reached

The bill amends s. 565.03(2)(c)3., F.S., to permit a craft distillery that reaches the production qualification limit during a license year (i.e., 250,000 gallons) to continue retail sales at its distillery or at its additional sales room located in the same county as the craft distillery if the distillery has been issued a vendor's license for the craft distillery and for its additional sales room as authorized by s. 561.221, F.S., as amended by the bill. A craft distillery may retain and renew its vendor's license or licenses if it exceeds the 250,000-gallon production limitation.

Shipping Distilled Spirits

The bill amends s. 565.03(2)(c)4., F.S., to provide that the shipping prohibitions in this subparagraph apply to a craft distillery "licensed under this section." The bill does not authorize a craft distillery to ship distilled spirits if licensed as a vendor under s. 561.221, F.S. Although a

winery may ship wine to consumers,³⁵ deliveries of alcoholic beverages by a vendor away from its place of business may be made only in vehicles that are owned or leased by the licensee.³⁶

Transferring Distilled Spirits

The bill creates s. 565.03(2)(c)5., F.S., and permits a craft distillery to transfer distilled spirits from its federal bonded space or non-bonded space at its licensed premises or storage areas to its souvenir gift shop or additional sales room. The division must approve the storage areas, provided that each is included in the distillery's current state tax bond. The transfers of wine or distilled spirits must be reported to the division pursuant to s. 561.55, F.S., and included in the winery's or distillery's monthly excise tax payment. The bill provides a comparable provision in s. 561.221(1)(c), F.S., for a vendor-licensed craft distillery.

Transferring a License

The bill amends s. 565.03(2)(c)5., F.S., to repeal the prohibition against a craft distillery transferring its license or any ownership interest in it to any individual or entity with a direct or indirect interest in another distillery licensed in any other state, territory, or country.

The bill also amends s. 565.03(2)(c)6., F.S., to repeal the prohibition on a craft distillery being affiliated with another distillery that produces more than 75,000 gallons per calendar year of distilled spirits on its premises in this state or in any other state, territory, or country.

Tastings of Distilled Spirits

The bill amends s. 565.17, F.S., to permit a craft distillery to conduct tastings of distilled spirits products at the premises of any vendor licensed for the sale of such products by package or for consumption on the premises, if limited to, and directed toward the general public of the age of legal consumption.

Effective Date

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

³⁵ See *Bainbridge v. Turner*, No. 8:99-CV-2681-T-27TBM (M.D. Fla. August 5, 2005), which held that ss. 561.54(1)-(2) and 561.545(1), F.S., which prohibit out-of-state shipments of alcoholic beverages into Florida, violate the Commerce Clause of the U.S. Constitution and were therefore unconstitutional under the authority in *Granholm v. Heald*, 125 S.Ct.1885, 161 L.Ed.2d 796 (2005), and enjoined the enforcement of those provisions against out-of-state vendors and producers. Consequently, the division permits in-state wineries to ship wine to consumers because out-of-state wineries may ship wine directly to consumers in Florida.

³⁶ Section 561.57(2), F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

CS/CS/SB 166 permits a designated craft distillery to hold up to three vendor licenses. However, the bill permits each distillery to hold two vendor licenses per distillery (i.e., one license on property contiguous to the craft distillery's production building, and a second license for the additional sales room located within the same county as the distillery). The DBPR states that 45 distilleries qualify as craft distilleries.³⁷ If each distillery holds two vendor licenses (assuming no common ownership among the craft distilleries), the bill may result in a \$163,800 revenue increase, based on the maximum fee of \$1,820 per vendor license.³⁸

Current law requires that 24 percent of the license tax collected for a license issued in a county under ss. 561.14(6), 563.02, 564.02, 565.02(1), (4), and (5), and 565.03, F.S., be returned to the appropriate county tax collector.³⁹ Thirty-eight percent of the license taxes collected within an incorporated municipality pursuant to these provisions must be returned to the appropriate municipal officer.⁴⁰ Consequently, the additional vendor licenses may cause license taxes returned to counties and municipalities to increase annually by up to \$39,800 and \$62,244, respectively, and a net increase in payments to the AB&T TF of up to \$62,244.

VI. Technical Deficiencies:

None.

³⁷ See 2017 Agency Legislative Bill Analysis issued by the DBPR for SB 166, dated January 17, 2017 (on file with Senate Committee on Regulated Industries) at page 2.

³⁸ See ss. 561.02(1)(b)-(g), F.S., which provides the license fees for vendors operating a place of business where consumption of beer, wine and distilled spirits on the premises is permitted.

³⁹ Section 561.342(1), F.S.

⁴⁰ Section 561.342(2), F.S.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 561.221, 565.03, and 565.17.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Commerce and Tourism on April 3, 2017:

The committee substitute reinstitutes the requirement that a craft distillery's sales must be for the consumer's personal use and not for resale, which was removed from law in the original bill.

CS by Regulated Industries on February 8, 2017:

The committee substitute:

- Amends s. 561.221(1), F.S., to replace the term “certified” with the term “designated” in reference to a Florida craft distillery;
- Does not reduce the annual license tax for a craft distillery in s. 565.03(2)(a)1., F.S.;
- Revises s. 565.03(1)(b), F.S., to provide that a distillery is “designated” instead of “certified” by the division as a “craft distillery” when the distillery provides written notice to the division of its decision to qualify as a craft distillery; and
- Amends 565.03(2)(c)3., F.S., to provide that a craft distillery may retain and renew its vendor's licenses if it exceeds the production limitation to qualify as a craft distillery.

- B. **Amendments:**

None.



133054

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/03/2017	.	
	.	
	.	
	.	

The Committee on Commerce and Tourism (Steube) recommended the following:

Senate Amendment

Delete lines 124 - 125
and insert:
~~per calendar year~~ for the consumer's personal use and not for
resale ~~and who are present at the distillery's licensed premises~~

By the Committee on Regulated Industries; and Senators Steube, Brandes, and Hutson

580-01752-17

2017166c1

1 A bill to be entitled
 2 An act relating to alcoholic beverages; amending s.
 3 561.221, F.S.; providing that the ownership,
 4 management, operation, or control of up to three
 5 vendor's licenses for the sale of alcoholic beverages
 6 by a designated Florida Craft Distillery is not
 7 prohibited under specified laws; requiring the
 8 Division of Alcoholic Beverages and Tobacco to issue
 9 permits to designated Florida Craft Distilleries to
 10 conduct certain tastings and sales; requiring such
 11 distilleries to pay entry fees and have a
 12 representative present during certain events;
 13 authorizing the transfer of wine and distilled spirits
 14 to vendors by specified wineries and distilleries
 15 under certain circumstances; requiring the division to
 16 approve certain storage areas; requiring wineries and
 17 distilleries to report all such transfers to the
 18 division and to include them in monthly excise tax
 19 payments; amending s. 565.03, F.S.; redefining the
 20 term "craft distillery"; specifying authorized
 21 products for sale by craft distilleries; providing
 22 limitations on retail sales by craft distilleries to
 23 consumers; permitting craft distilleries to retain and
 24 renew a vendor's license under specified
 25 circumstances; authorizing craft distilleries to
 26 transfer distilled spirits under certain conditions;
 27 requiring the division to approve certain storage
 28 areas; requiring distilleries to report all such
 29 transfers to the division and to include them in
 30 monthly excise tax payments; deleting certain
 31 prohibitions on the transfer of a distillery license

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-01752-17

2017166c1

32 and affiliated ownership; authorizing craft
 33 distilleries to apply for a sales room location under
 34 certain circumstances; amending s. 565.17, F.S.;
 35 authorizing craft distilleries to conduct tastings
 36 under certain circumstances; providing an effective
 37 date.
 38

39 Be It Enacted by the Legislature of the State of Florida:
 40

41 Section 1. Subsection (1) of section 561.221, Florida
 42 Statutes, is amended to read:

43 561.221 Licensing of manufacturers and distributors as
 44 vendors and of vendors as manufacturers; conditions and
 45 limitations.—

46 (1) (a) Nothing contained in s. 561.22, s. 561.42, or any
 47 other provision of the Beverage Law prohibits the ownership,
 48 management, operation, or control of not more than three
 49 vendor's licenses for the sale of alcoholic beverages by a
 50 manufacturer of wine or a designated Florida Craft Distillery
 51 ~~who is~~ licensed and engaged in the manufacture of wine or
 52 distilled spirits in this state, even if such manufacturer is
 53 also licensed as a distributor; provided that ~~no~~ such vendor's
 54 license is not ~~shall be~~ owned, managed, operated, or controlled
 55 by any licensed manufacturer of wine or any craft distillery
 56 unless the licensed premises of the vendor are situated on
 57 property contiguous to the manufacturing premises of the
 58 licensed manufacturer of wine or distilled spirits or in its
 59 sales room pursuant to s. 565.03.

60 (b) The Division of Alcoholic Beverages and Tobacco shall

Page 2 of 7

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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issue permits to a certified Florida Farm Winery or a designated Florida Craft Distillery to conduct tasting and sales of wine or distilled spirits produced by certified Florida Farm Wineries or designated Florida Craft Distilleries at Florida fairs, trade shows, expositions, and festivals. The certified Florida Farm Winery or designated Florida Craft Distillery shall pay all entry fees and shall have a winery or distillery representative present during the event. The permit is limited to the length of the event.

(c) A certified Florida Farm Winery or designated Florida Craft Distillery may transfer wine or distilled spirits produced at such winery or distillery, respectively, out of its federal bonded space or nonbonded space at its licensed premises or storage areas to its vendor's licensed premises or approved sales room. The division shall approve the storage areas, provided that each is included in the winery's or distillery's current state tax bond. All such transfers of wine or distilled spirits shall be reported to the division pursuant to s. 561.55 and included in the winery's or distillery's excise tax payment to the state each month.

Section 2. Paragraph (b) of subsection (1) and paragraph (c) of subsection (2) of section 565.03, Florida Statutes, are amended to read:

565.03 License fees; manufacturers, distributors, brokers, sales agents, and importers of alcoholic beverages; vendor licenses and fees; craft distilleries.—

(1) As used in this section, the term:

(b) "Craft distillery" means a licensed distillery that produces 250,000 ~~75,000~~ or fewer gallons per calendar year of

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distilled spirits on its premises and is designated as a craft distillery by ~~has notified~~ the division upon notification in writing of its decision to qualify as a craft distillery.

(2) (c) A craft distillery licensed under this section may sell to consumers, at its souvenir gift shop, branded products distilled and bottled on its premises in this state in factory-sealed containers approved for sale ~~that are filled at the distillery~~ for off-premises consumption. Such sales are authorized only on ~~private~~ property owned or leased by the distillery which is contiguous to the licensed distillery premises and at one other approved sales room located in the same county as the distillery's production building which shall be an extension of the craft distillery's licensed premises in ~~this state~~ and included on the sketch or diagram defining the licensed premises submitted with the distillery's license application. All sketch or diagram revisions by the distillery shall require local zoning approval and the division's approval verifying that the souvenir gift shop location and all areas used and operated by the licensed distillery are ~~is~~ owned or leased by the distillery and on property contiguous to the distillery's production building in this state or within the extended licensed premises.

1. A craft distillery licensed under this section may not sell any factory-sealed individual containers of spirits except in face-to-face sales transactions at the craft distillery's licensed premises with consumers who are making a purchase ~~of no more than:~~

a. ~~Two individual containers of each branded product;~~

b. ~~Three individual containers of a single branded product~~

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and up to one individual container of a second branded product,
or

~~c. Four individual containers of a single branded product.~~

2. Each container sold in face-to-face transactions with consumers must comply with the container limits in s. 565.107 ~~per calendar year for the consumer's personal use and not for resale and who are present at the distillery's licensed premises in this state.~~

3. A craft distillery licensed under this section must report to the division within 5 days after it reaches the production limitations provided in paragraph (1)(b). Any retail sales to consumers at the craft distillery's licensed premises are prohibited beginning the day after it reaches the production limitation unless it has been issued a vendor's license at each craft distillery and additional sales room authorized in s. 561.221. Notwithstanding any of the provisions of this section or s. 561.221, a craft distillery which holds a vendor's license may retain and renew such license, if such craft distillery exceeds the production limitation in paragraph (1)(b).

4. A craft distillery licensed under this section may not ship or arrange to ship any of its distilled spirits to consumers and may sell and deliver only to consumers within the state in a face-to-face transaction at the distillery property. However, a craft distiller licensed under this section may ship, arrange to ship, or deliver such spirits to manufacturers of distilled spirits, wholesale distributors of distilled spirits, state or federal bonded warehouses, and exporters.

5. A craft distillery may transfer distilled spirits it manufactures from its federal bonded space or nonbonded space at

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its licensed premises or storage areas to its souvenir gift shop and additional sales room. The division shall approve all storage areas requested by the craft distillery which are included in its current state bond. All such transfers of distilled spirits shall be reported to the division pursuant to s. 561.55 and included in the excise tax payment due the state ~~Except as provided in subparagraph 6., it is unlawful to transfer a distillery license for a distillery that produces 75,000 or fewer gallons per calendar year of distilled spirits on its premises or any ownership interest in such license to an individual or entity that has a direct or indirect ownership interest in any distillery licensed in this state; another state, territory, or country; or by the United States government to manufacture, blend, or rectify distilled spirits for beverage purposes.~~

6. A craft distillery may include a sales room location authorized by this subsection on its original license application or by an amendment to its license application on forms prescribed by the division ~~shall not have its ownership affiliated with another distillery, unless such distillery produces 75,000 or fewer gallons per calendar year of distilled spirits on each of its premises in this state or in another state, territory, or country.~~

Section 3. Section 565.17, Florida Statutes, is amended to read:

565.17 Beverage tastings by distributors and vendors.—A licensed distributor of spirituous beverages, or any vendor or craft distillery, is authorized to conduct spirituous beverage tastings upon any licensed premises authorized to sell

580-01752-17

2017166c1

177 spirituous beverages by package or for consumption on premises
178 without being in violation of s. 561.42, provided that the
179 conduct of the spirituous beverage tasting shall be limited to
180 and directed toward the general public of the age of legal
181 consumption.

182 Section 4. This act shall take effect upon becoming a law.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Judiciary, *Chair*
Banking and Insurance, *Vice Chair*
Agriculture
Appropriations Subcommittee on Finance and Tax
Regulated Industries

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR GREG STEUBE

23rd District

February 9, 2017

The Honorable Bill Montford
Florida Senate
410 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Montford,

I am writing this letter because my bill, SB 166 – Alcoholic Beverages, has been referred to the Senate Commerce and Tourism Committee. This bill passed the Senate Regulated Industries Committee on February 8. I am respectfully requesting that you place the bill on your committee's calendar for the next committee week.

Thank you for your consideration. Please contact me if you have any questions.

Very respectfully yours,

A handwritten signature in blue ink, appearing to read "Greg Steube".

W. Gregory Steube, District 23

REPLY TO:

- ☐ 722 Apex Road, Unit A, Sarasota, Florida 34240 (941)342-9162
- ☐ 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

April 3, 2017
Meeting Date

SB 166
Bill Number (if applicable)

Topic Alcoholic Beverages

Name RICHARD TURNER

Amendment Barcode (if applicable)

Job Title GEN COUNSEL : VP GOVERNMENTAL RELATIONS

Address 230 S. ADAMS ST
Street

Phone 850.224.2250

TALLAHASSEE FL 32301
City State Zip

Email rturner@fla.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FLORIDA RESTAURANT & LODGING ASSN

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/3/17

Meeting Date

CS/SB 166
Bill Number (if applicable)

Topic Distilleries

Name Scott Ashley

Job Title President & General Counsel

Address 215 S. Monroe St. #800-A

Street

City

Talla

FL

State

32301

Zip

Phone (850) 681-8700

Email scott@wsdflorida.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Wine & Spirits Distributors of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/13/17
Meeting Date

166
Bill Number (if applicable)

Topic Craft Distilling

Name Ari Bergil

Job Title Attorney

Address 2 South Biscayne Blvd. #3180
Street

Miami FL 33131
City State Zip

Phone 305-721-1600

Email abergil@ij.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Institute for Justice

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-3-2017

Meeting Date

166

Bill Number (if applicable)

Topic Craft Distilleries

Name Jason Unger

Amendment Barcode (if applicable)

Job Title _____

Address 301 S. Bronough Street

Street

Tallahassee

City

FL

State

32301

Zip

Phone 577-9090

Email junger@gray-robinson.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Distillers Guild

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/3/17

Meeting Date

166

Bill Number (if applicable)

Topic Alcoholic Beverages

Amendment Barcode (if applicable)

Name Carolyn Johnson

Job Title Policy Director

Address 136 S Bronough St

Phone 850-521-1200

Street

Tallahassee

FL

32301

City

State

Zip

Email cjohnson@flchamber.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

The Florida Senate COMMITTEE VOTE RECORD

COMMITTEE: Commerce and Tourism
ITEM: CS/SB 166
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Monday, April 3, 2017
TIME: 1:30—3:30 p.m.
PLACE: 110 Senate Office Building

FINAL VOTE		SENATORS	4/03/2017 Amendment 133054					
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay
	X	Gibson						
X		Hutson						
X		Latvala						
		Passidomo						
X		Rodriguez						
X		Young						
X		Gainer, VICE CHAIR						
X		Montford, CHAIR						

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: SB 490

INTRODUCER: Senators Perry and Hutson

SUBJECT: Tax on Sales, Use, and Other Transactions

DATE: March 29, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	Favorable
2.			AFT	
3.			AP	

I. Summary:

SB 490 establishes a 10-day sales tax holiday beginning August 4, 2017, and ending August 13, 2017. During the holiday, specific “back to school” purchases of clothing, school supplies, and personal computers are exempt from the state sales tax and county discretionary sales surtaxes.

The bill provides the Department of Revenue (DOR) a nonrecurring General Revenue appropriation of \$225,000 in Fiscal Year 2017-2018 to administer the provisions of this act.

The Revenue Estimating Conference has not yet reviewed the fiscal impact of this bill.

II. Present Situation:

Florida levies a 6 percent sales and use tax on the sale or rental of most tangible personal property, admissions,¹ transient rentals,² commercial real estate rentals,³ and a limited number of services.⁴ Chapter 212, F.S., contains statutory provisions authorizing the levy and collection of Florida’s sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. Sales tax is added to the price of taxable goods or services, and collected from the purchaser at the time of sale.⁵

¹ Section 212.04, F.S.

² Section 212.03, F.S.

³ Section 212.031, F.S.

⁴ Florida Department of Revenue, *Florida’s Sales and Use Tax: Who Must Pay Tax? Partial List of Taxable Business Activities*, available at: http://dor.myflorida.com/dor/taxes/sales_tax.html (last visited Mar. 27, 2017).

⁵ *Id.*

In addition to the state tax, s. 212.055, F.S., authorizes counties to impose eight local discretionary sales surtaxes. The surtax applies to all transactions occurring in the county subject to the ch. 212, F.S., state tax imposed on sales, use, services, rental, admissions, and other transactions,⁶ and on communications services as defined in ch. 202, F.S.⁷

The “Florida Residents’ Tax Relief Act of 1998” established Florida’s first tax holiday, during which clothing purchases of \$50 or less were exempt from tax.⁸ In 1999, backpacks were added to the tax holiday;⁹ school supplies were added in 2001.¹⁰ In 2013, the Legislature exempted personal computers and related accessories that were purchased for personal use, up to \$750, from sales tax collection during the sales tax holiday.¹¹ Since its inception, the duration of similar “back to school” sales tax holidays varied from 3 to 10 days, as have the type and value of exempt items.

III. Effect of Proposed Changes:

The bill provides for a 10-day sales tax holiday, which begins August 4, 2017, and ends August 13, 2017. During the holiday, the following items that cost \$100 or less are exempt from the state sales tax and county discretionary sales surtaxes:

- Clothing, defined as an “article of wearing apparel intended to be worn on or about the human body, excluding watches, watchbands, jewelry, umbrellas, and handkerchiefs;”
- Footwear, which does not include skis, swim fins, roller blades, and skates;
- Wallets; and
- Bags, which include handbags, backpacks, fanny packs, and diaper bags, but exclude briefcases, suitcases and other garment bags.

The bill also exempts “school supplies” that cost \$15 or less per item.

Personal computers and related accessories that have a sales price of \$1,000 or less that are purchased for noncommercial home or personal use are also exempt. This exemption includes electronic book readers, tablets, laptops, monitors, input devices, and non-recreational software. Cell phones, furniture, and devices or software intended primarily for recreational use are not exempt.

The “back to school” sales tax holiday does not apply to the following sales:

- Sales within a theme park or entertainment complex, as defined in s. 509.013(9), F.S.;
- Sales within a public lodging establishment, as defined in s. 509.013(4), F.S.; and
- Sales within an airport, as defined in s. 330.27(2), F.S.

The bill authorizes a nonrecurring appropriation of \$225,000 from the General Revenue Fund to the DOR to implement this section.

⁶ The tax rates, duration of the surtax, method of imposition, and proceed uses are individually specified in s. 212.055, F.S. General limitations, administration, and collection procedures are set forth in s. 212.054, F.S.

⁷ Section 212.054, F.S.

⁸ Ch. 341, Laws of Fla. (1998).

⁹ Ch. 229, Laws of Fla. (1999).

¹⁰ Ch. 148, Laws of Fla. (2001).

¹¹ Ch. 42, s. 42 Laws of Fla. (2013).

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

Article VII, s. 18 of the Florida Constitution governs laws that require counties and municipalities to spend funds or that limit their ability to raise revenue or receive state tax revenues.

Subsection (b) of Article VII, s. 18 of the Florida Constitution provides that, except upon approval by each house of the Legislature by two-thirds vote of its membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, these requirements do not apply to laws that have an insignificant fiscal impact, which for fiscal year 2017-2018, is approximately \$2 million or less.^{12,13,14}

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

The Revenue Estimating Conference has not yet reviewed the fiscal impact of this bill. There is no recurring fiscal impact because this bill provides a sales tax holiday during Fiscal Year 2017-2018 only.

B. Private Sector Impact:

The sales tax holiday may promote retail sales at businesses that qualify under this bill.

C. Government Sector Impact:

The bill provides the DOR a nonrecurring General Revenue appropriation of \$225,000 in Fiscal Year 2017-2018 to administer the provisions of the act. The Department estimates

¹² FLA. CONST. art. VII, s. 18(d).

¹³ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (September 2011), available at: <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Mar. 28, 2017).

¹⁴ Based on the Demographic Estimating Conference's population adopted on Feb. 13, 2017. The conference packet can be found at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Mar. 28, 2017).

the cost of notifying approximately 600,000 businesses of the sales tax holiday by printing and mailing of a Tax Information Publication will be \$241,200.¹⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

Prior iterations of the “Back to School” sales tax holiday exempted “the first \$750” of a personal computer’s price; the language of this bill exempts only computers that have a sales price of \$1,000 or less. Therefore, fewer computers and related items will be subject to a sales tax holiday exemption than in previous years.

VIII. Statutes Affected:

This bill creates an unnumbered section of law.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

¹⁵ Department of Revenue, *Senate Bill 490 Agency Analysis* (Feb. 10, 2017) (on file with the Commerce and Tourism Committee).

By Senator Perry

8-00672A-17

2017490__

A bill to be entitled

An act relating to the tax on sales, use, and other transactions; providing an exemption from the sales and use tax for the sale of certain clothing, wallets, bags, school supplies, and personal computers and related accessories during a specified period; defining terms; providing exceptions to the exemption; authorizing the Department of Revenue to adopt emergency rules; providing an appropriation; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. (1) The tax levied under chapter 212, Florida Statutes, may not be collected during the period from 12:01 a.m. on August 4, 2017, through 11:59 p.m. on August 13, 2017, on the sale of:

(a) Clothing, wallets, or bags, including handbags, backpacks, fanny packs, and diaper bags, but excluding briefcases, suitcases, and other garment bags, having a sales price of \$100 or less per item. As used in this paragraph, the term "clothing" means:

1. An article of wearing apparel intended to be worn on or about the human body, excluding watches, watchbands, jewelry, umbrellas, and handkerchiefs; and

2. All footwear, excluding skis, swim fins, roller blades, and skates.

(b) School supplies having a sales price of \$15 or less per item. As used in this paragraph, the term "school supplies" means pens, pencils, erasers, crayons, notebooks, notebook filler paper, legal pads, binders, lunch boxes, construction paper, markers, folders, poster board, composition books, poster

8-00672A-17

2017490__

paper, scissors, cellophane tape, glue or paste, rulers, computer disks, protractors, compasses, and calculators.

(c) Personal computers and related accessories that have a sales price of \$1,000 or less and are purchased for noncommercial home or personal use. As used in this paragraph, the term:

1. "Personal computer" means an electronic device that accepts information in digital or a similar form and manipulates such information for a result based on a sequence of instructions. The term includes an electronic book reader and a laptop, desktop, handheld, tablet, or tower computer, but does not include a cellular telephone, video game console, digital media receiver, or device that is not primarily designed to process data.

2. "Related accessories" includes keyboards, mice, personal digital assistants, monitors, other peripheral devices, modems, routers, and nonrecreational software, regardless of whether the accessories are used in association with a personal computer base unit, but does not include furniture or systems, devices, software, monitors with a television tuner, or other peripherals that are designed or intended primarily for recreational use.

(2) The tax exemptions provided in this section do not apply to sales within a theme park or entertainment complex as defined in s. 509.013, Florida Statutes, within a public lodging establishment as defined in s. 509.013, Florida Statutes, or within an airport as defined in s. 330.27, Florida Statutes.

(3) The Department of Revenue may, and all conditions are deemed met to, adopt emergency rules pursuant to s. 120.54(4), Florida Statutes, to administer this section.

8-00672A-17

2017490__

62 Section 2. For the 2017-2018 fiscal year, the sum of
63 \$225,000 in nonrecurring funds is appropriated from the General
64 Revenue Fund to the Department of Revenue for the purpose of
65 implementing this act. Funds from the appropriation which remain
66 unexpended or unencumbered as of June 30, 2018, shall revert to
67 the General Revenue Fund.

68 Section 3. This act shall take effect upon becoming a law.



The Florida Senate

Committee Agenda Request

To: Senator Bill Montford, Chair
Committee on Commerce and Tourism

Subject: Committee Agenda Request

Date: February 15, 2017

I respectfully request that **Senate Bill #490**, relating to Tax on Sales, Use, and Other Transactions, be placed on the:

- ☒ committee agenda at your earliest possible convenience.
- ☐ next committee agenda.

Senator Keith Perry
Florida Senate, District 8

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4.2.17

Meeting Date

490

Bill Number (if applicable)

Topic Sales Tax Holiday ✓

Name Sarah Busk

Job Title _____

Address 204 S. Monroe St
Street

TLH FL 32301
City State Zip

Phone 850.222.8400

Email syb@caldinespartners.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing TechNet

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/3/17

Meeting Date

490

Bill Number (if applicable)

Topic Sales tax holiday

Amendment Barcode (if applicable)

Name Melissa Ramba

Job Title VP Government Affairs

Address 227 S Adams St.

Phone _____

Street

Tallahassee

FL

32301

City

State

Zip

Email Melissa@FRF.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Retail Federation

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

COMMITTEE: Commerce and Tourism
ITEM: SB 490
FINAL ACTION: Favorable
MEETING DATE: Monday, April 3, 2017
TIME: 1:30—3:30 p.m.
PLACE: 110 Senate Office Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: CS/SB 1040

INTRODUCER: Regulated Industries Committee and Senator Artiles

SUBJECT: Malt Beverages

DATE: March 31, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	McSwain	RI	Fav/CS
2.	Askey	McKay	CM	Favorable
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1040 creates an exception to the alcoholic beverage tied-house evil prohibitions to permit a malt beverage distributor to give or sell malt beverage branded glassware to a vendor licensed to sell beer or malt beverages for on-premises consumption. The bill prohibits the distributor from giving more than five cases that include up to 24 pieces per case of single-service glassware per brand, per licensed premises, per calendar year, and prohibits the vendor from selling the glassware or returning it to the distributor for cash or credit.

The “tied house evil” statute in s. 561.42, F.S., prohibits a member of the alcoholic beverages industry, including a manufacturer, distributor, or importer, from having a financial interest, directly or indirectly, in the establishment or business of a licensed vendor, and prohibits a manufacturer, distributor, or importer from giving gifts, loans or property, or rebates to retail vendors.

The bill provides an effective date of July 1, 2017.

II. Present Situation:

In Florida, alcoholic beverages are regulated by the Beverage Law,¹ which regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and

¹ Section 561.01(6), F.S., provides that the “The Beverage Law” means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

vendors.² The Division of Alcoholic Beverages and Tobacco (division) in the Department of Business and Professional Regulation administers and enforces the Beverage Law.³

“Alcoholic beverages” are defined in s. 561.01, F.S., as “distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume.” “Malt beverages” are brewed alcoholic beverages containing malt.⁴

Section 561.14, F.S., specifies the license and registration classifications used in the Beverage Law.

- “Manufacturers” are those “licensed to manufacture alcoholic beverages and distribute the same at wholesale to licensed distributors and to no one else within the state, unless authorized by statute.”⁵
- “Distributors” are those “licensed to sell and distribute alcoholic beverages at wholesale to persons who are licensed to sell alcoholic beverages.”⁶
- “Importers” are those licensed to sell, or to cause to be sold, shipped, and invoiced, alcoholic beverages to licensed manufacturers or licensed distributors, and to no one else in this state; provided that ss. 564.045 and 565.095, F.S., relating to primary American source of supply licensure, are in no way violated by such imports.⁷
- “Vendors” are those “licensed to sell alcoholic beverages at retail only” and may not “purchase or acquire in any manner for the purpose of resale any alcoholic beverages from any person not licensed as a vendor, manufacturer, bottler, or distributor under the Beverage Law.”⁸

Three-Tier System

In the United States, the regulation of alcohol since the repeal of Prohibition has traditionally been based upon a “three-tier system.” The system requires separation of the manufacture, distribution, and sale of alcoholic beverages. The manufacturer creates the beverages, and the distributor obtains the beverages from the manufacturer to deliver to the vendor. The vendor makes the ultimate sale to the consumer.⁹ A manufacturer, distributor, or exporter may not be licensed as a vendor to sell directly to consumers.¹⁰

Generally, in Florida, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.¹¹ Licensed manufacturers, distributors, and registered exporters are

² See s. 561.14, F.S.

³ Section 561.02, F.S.

⁴ Section 563.01, F.S.

⁵ Section 561.14(1), F.S.

⁶ Section 561.14(2), F.S.

⁷ Section 561.01(5), F.S.

⁸ Section 561.14(3), F.S.

⁹ Section 561.14, F.S.

¹⁰ Section 561.22(1), F.S.

¹¹ Section 561.14(3), F.S. However, see the exceptions provided in ss. 561.221 and 565.03, F.S.

prohibited from also being licensed as vendors.¹² Manufacturers are also generally prohibited from having an interest in a vendor and from distributing directly to a vendor.¹³

Tied House Evil Prohibitions

The three-tier system is deeply rooted in the perceived evils of the “tied house” in which a bar is owned or operated by a manufacturer or the manufacturer exercises undue influence over the retail vendor.¹⁴

Section 561.42, F.S., known as the “tied house evil” statute, regulates the permitted and prohibited relationships and interactions of manufacturers and distributors with vendors in order to prevent a manufacturer or distributor from having a financial interest, directly or indirectly, in the establishment or business of a licensed vendor, and to prevent a manufacturer or distributor from giving a vendor gifts, loans or property, or rebates.¹⁵ The prohibitions apply to a manufacturer, distributor, importer, primary American source of supply,¹⁶ brand owner or registrant, broker, and sales agent, or sales person thereof (industry members).

The tied house evil statute also prohibits any distributor or vendor from receiving any financial incentives from any manufacturer. It further prohibits manufacturers or distributors from assisting retail vendors by gifts or loans of money or property or by the giving of rebates. These prohibitions do not, however, apply to any bottles, barrels, or other containers necessary for the legitimate transportation of such beverages, to advertising materials, or to the extension of credit,¹⁷ for liquors sold, made strictly in compliance with the provisions of s. 561.42, F.S.¹⁸

Section 561.42, F.S., also prohibits licensed manufactures and distributors from:

- Making further sales to vendors that the division has certified as not having fully paid for all liquors previously purchased;¹⁹
- Directly or indirectly giving, lending, renting, selling, or in any other manner furnishing to a vendor any outside sign, printed, painted, electric, or otherwise;²⁰ and
- Providing neon or electric signs, window painting and decalcomanias, posters, placards, and other advertising material herein authorized to be used or displayed by the vendor in the interior of his or her licensed premises.²¹

Section 561.42(14), F.S., prohibits industry members from providing expendable retail advertising specialties, unless sold to the vendor at not less than the actual cost to the industry

¹² Section 561.22, F.S.

¹³ Sections 563.022(14) and 561.14(1), F.S.

¹⁴ Erik D. Price, *Time to Untie the House? Revisiting the Historical Justifications of Washington’s Three-Tier System Challenged by Costco v. Washington State Liquor Control Board*, (June 2004) available at: http://www.lanepowell.com/wp-content/uploads/2009/04/pricee_001.pdf (last visited March 13, 2017).

¹⁵ Section 561.42(1), F.S.

¹⁶ See s. 564.045, F.S.

¹⁷ Section 561.42(2), F.S., permits distributors to extend credit for the sale of liquors to any vendor up to, but not including, the 10th day after the calendar week within which such sale was made.

¹⁸ Section 561.42(1), F.S.

¹⁹ Section 561.42(4), F.S.

²⁰ Section 561.42(10), F.S.

²¹ Section 561.42(12), F.S.

member who initially purchased them. A member of the malt beverage industry may provide a vendor with expendable retailer advertising specialties such as trays, coasters, mats, menu cards, napkins, cups, glasses, thermometers, and the like. The industry member must sell these items to a vendor only at a price not less than the actual cost to the industry member who initially purchased the items, without limitation in total dollar value of such items sold to a vendor. Industry members may not engage in cooperative advertising with a vendor.²²

III. Effect of Proposed Changes:

The bill amends s. 561.42(14), F.S., to permit a malt beverage distributor to give or sell malt beverage branded glassware to a vendor licensed to sell malt beverages for on-premises consumption. The bill prohibits the distributor from giving more than five cases that include up to 24 pieces per case of single-service glassware per brand, per licensed premises, per calendar year, and prohibits the vendor from selling the glassware or returning it to the distributor for cash or credit.

Other industry members would continue to be subject to the restriction of selling non-branded glassware to a vendor for a price not less than the actual cost to the industry member who initially purchased the items.

The effective date of the bill is July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

²² Section 561.42(14)(e), F.S.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 561.42 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Regulated Industries on March 21, 2017:

The committee substitute:

- Removes from the bill the provision that permits a beer industry member to sell expendable advertising specialties to a vendor at not less than the actual cost to the industry member who initially purchased the items.
- Permits only malt beverage distributors to give or sell branded glassware to vendors licensed for consumption on the premises, and removes the provision that grants that authority to manufacturers and importers of malt beverages.
- Prohibits the distributor from giving more than five cases that include up to 24 pieces per case of single-service glassware per brand, per licensed premises, per calendar year, and prohibits the vendor from selling the glassware or returning it to the distributor for cash or credit.

B. Amendments:

None.



694330

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/03/2017	.	
	.	
	.	
	.	

The Committee on Commerce and Tourism (Gibson) recommended the following:

Senate Amendment (with title amendment)

Delete lines 43 - 47
and insert:
than 2 cases that include up to 24 pieces per case of single-
service glassware per brand, up to 3 malt beverage brands per
manufacturer or importer, per licensed premises, per calendar
year. As used in this subsection, the term "single-service
glassware" means a glass container that can hold up to 22 ounces
of liquid. Distributors shall maintain a log of the branded



694330

single-service glassware given or sold to vendors. A vendor may
not sell any such glassware that is given by a distributor or
return such glassware to the distributor for cash or credit.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

 Delete line 7

and insert:

 be given by a distributor to a vendor; defining the
 term "single-service glassware"; requiring
 distributors to maintain a log of the branded single-
 service glassware given or sold to vendors;
 prohibiting a

By the Committee on Regulated Industries; and Senator Artiles

580-02661-17

20171040c1

A bill to be entitled

An act relating to malt beverages; amending s. 561.42, F.S.; authorizing a distributor of malt beverages to give or sell specified glassware to vendors licensed to sell malt beverages for on-premises consumption; providing an annual limit on such glassware that may be given by a distributor to a vendor; prohibiting a vendor from selling single-service glassware or returning it to a distributor for cash or credit under certain circumstances; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (14) of section 561.42, Florida Statutes, is amended, and subsection (15) is added to that section, to read:

561.42 Tied house evil; financial aid and assistance to vendor by manufacturer, distributor, importer, primary American source of supply, brand owner or registrant, or any broker, sales agent, or sales person thereof, prohibited; procedure for enforcement; exception.—

(14) The division shall adopt reasonable rules governing promotional displays and advertising, which rules shall not conflict with or be more stringent than the federal regulations pertaining to such promotional displays and advertising furnished to vendors by distributors, manufacturers, importers, primary American sources of supply, or brand owners or registrants, or any sales agent or sales person thereof; however:

Page 1 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02661-17

20171040c1

(a) If a manufacturer, distributor, importer, brand owner, or brand registrant of malt ~~beverages~~ beverage, or any sales agent or sales person thereof, provides a vendor with expendable retailer advertising specialties such as trays, coasters, mats, menu cards, napkins, cups, ~~glassware~~ glasses, thermometers, and the like, such items may be sold only at a price not less than the actual cost to the industry member who initially purchased them, without limitation in total dollar value of such items sold to a vendor.

(15) Notwithstanding paragraph (14)(a), a distributor of malt beverages may give or sell malt beverage branded single-service glassware to a vendor licensed to sell malt beverages for on-premises consumption. A distributor may not give more than 5 cases that include up to 24 pieces per case of single-service glassware per brand, per licensed premises, per calendar year, and a vendor may not sell any such glassware that is given by a distributor or return such glassware to the distributor for cash or credit.

Section 2. This act shall take effect July 1, 2017.

Page 2 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.



The Florida Senate

Committee Agenda Request

To: Senator Bill Montford, Chair
Committee on Commerce and Tourism

Subject: Committee Agenda Request

Date: March 23, 2017

I respectfully request that **Senate Bill #1040**, relating to Malt Beverages, be placed on the:

- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda.



Senator Frank Artiles
Florida Senate, District 40

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-3-17

Meeting Date

SB 1040

Bill Number (if applicable)

Topic _____

Name Gary Rutledge ✓

Job Title _____

Address 641 Forest Lair

Street

City

Tallahassee

State

FL

Zip

32312

Phone 681-6788

Email GaryRutledge@senior

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing M. Ned Coors

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

March 3, 2017
Meeting Date

1040
Bill Number (if applicable)

Topic Glassware (Beer) ✓

Name Mitch Rubin

Job Title Executive Director

Address 215 S. Monroe St #340
Street
Tallahassee, FL 32301
City State Zip

Phone (850) 224-2337

Email Mitch@FBWG.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Beer Wholesalers Assn

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/3/17

Meeting Date

1040
Bill Number (if applicable)

Topic Malt Beverages

Name Ron Pierce - RSA Consulting

Job Title President/CEO

Address 113 East College Ave.

Street

Tallahassee

City

FL

State

32301

Zip

Phone 813-777-5578

Email ron@rsaconsultingllc.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Suncoast Beverage Sales

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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1:30 NOS

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/3/17

Meeting Date

SB 1040

Bill Number (if applicable)

Topic Malt Beverages

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N Adams St

Phone 224-7173

Street

Tallahassee

FL

32301

City

State

Zip

Email bbevis@aif.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

April 3, 2017

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB1040

Bill Number (if applicable)

Topic MALT BEVERAGES

Name RICHARD TURNER

Amendment Barcode (if applicable)

Job Title GEN COUNSEL : V.P. GOVERNMENTAL RELATIONS

Address 230 S. ADAMS ST

Street

Phone 850.224.2250

TALLAHASSEE

City

FL

State

32301

Zip

Email rturner@frlga.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FLORIDA RESTAURANT & LODGING ASSOC

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/3/17
Meeting Date

SB 1040
Bill Number (if applicable)

Topic Glassware for Bars

Name Max Hervie

Job Title President

Address 117 South Gadsden St.
Street

Tallahassee FL 32301
City State Zip

Phone ~~850-222-1234~~

Email

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Tallahassee Bar & Hospitality Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-3-17
Meeting Date

1040
Bill Number (if applicable)

Topic Malt Beverages

Name Natalie King

Job Title VP/COO

Address 113 E Collage Ave.
Street

Tallahassee FL 32301
City State Zip

Phone 813 924-8218

Email Natalie@rsaconsulting.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Peper Distributing Company

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/3/17

Meeting Date

1040
Bill Number (if applicable)

Topic Beer and Malt Beverages ✓
Name Jonathan Rees

Amendment Barcode (if applicable)

Job Title Senior Manager, State Affairs

Address 204 S. Monroe St
Street

Phone (850) 570-0043

Tallahassee FL 32301
City State Zip

Email Jonathan.Rees@anheuser-busch.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Anheuser-Busch, Inc.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

April 3, 2017
Meeting Date

1040
Bill Number (if applicable)

Topic Beer / Malt Beverages

Name Josh Aubuchon

Job Title Attorney

Address 315 S. Calhoun St.
Street

Tallahassee
City

FL
State

32301
Zip

Phone 224-7000

Email _____

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Brewers Guild

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/3/17
Meeting Date

1040
Bill Number (if applicable)

Topic Beer glasses

Name Melissa Ramba

Job Title VP Government Affairs

Address 227 S Adams St.
Street

Tallahassee FL 32301
City State Zip

Phone _____

Email Melissa@FRF.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Retail Federation

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-3-17

Meeting Date

1040

Bill Number (if applicable)

Topic

Meat Beverages

Name

Natalee King

Amendment Barcode (if applicable)

Job Title

VP/coo

Address

Street

113 E College Ave

Phone

813 924 8218

City

Tallahassee FL 32301

State

Zip

Email

Natalee.Drsa consulting llc. com

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

Gold Coast Eagle Distributing

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4 | 3 | 17
Meeting Date

SB 1040
Bill Number (if applicable)

Topic Beer Glassware

Amendment Barcode (if applicable)

Name Scott Ashley

Job Title President & General Counsel

Address 215 S. Monroe St. #800-A

Phone (850) 681-8708

City Talla State FL Zip 32301

Email scott@wsdflorida.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Wine & Spirits Distributors of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

COMMITTEE: Commerce and Tourism
ITEM: CS/SB 1040
FINAL ACTION: Favorable
MEETING DATE: Monday, April 3, 2017
TIME: 1:30—3:30 p.m.
PLACE: 110 Senate Office Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: CS/SB 1136

INTRODUCER: Agriculture Committee and Senator Lee

SUBJECT: Cottage Food Operations

DATE: March 30, 2017

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Akhavein	Becker	AG	Fav/CS
2. Harmsen	McKay	CM	Favorable
3. _____	_____	RC	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1136 increases the maximum annual gross sales limit of cottage foods operations from \$15,000 to \$50,000. It allows cottage food operations to sell, offer for sale, and accept payment for cottage food products over the Internet, but requires the cottage food item to be delivered in person directly to the consumer, or to a specific event venue.

II. Present Situation:

Food Safety Laws

The Department of Agriculture and Consumer Services' (department's) Division of Food Safety ensures that safe, wholesome, and properly labeled food is available to the public through the permitting and inspection of food establishments, and inspection of food products that are sold or produced in Florida.¹ Over 45,000 food establishments are currently permitted and regulated by the department.² The department works in cooperation with the United States Department of

¹ Florida Department of Agriculture and Consumer Services, *Division of Food Safety*, <http://www.freshfromflorida.com/Divisions-Offices/Food-Safety> (last visited Mar. 29, 2017). See also ch. 500, F.S., the "Florida Food Safety Act."

² Department of Agriculture and Consumer Services, Division of Food Safety, p. 1, *SB 1136 Agency Analysis* (Mar. 8, 2017) (on file with the Agriculture Committee).

Agriculture and Food and Drug Administration to help ensure compliance with both state and federal regulations.³

Florida Cottage Food Operation Law

A cottage food operation is a business operated by a person who, under certain conditions and restrictions, produces or packages non-potentially hazardous food in their home kitchen.⁴ Though it has not adopted a rule on cottage food operations, the department has published materials defining potentially hazardous foods as those that:

- Require time or temperature control for safety to limit pathogenic micro-organism growth or toxin formation;
- Are an animal food that is raw or heat-treated;
- Are a plant food that is heat-treated or consists of raw seed sprouts, cut melons, cut leafy greens, cut tomatoes or mixtures of cut tomatoes that are not modified in a way so that they are unable to support pathogenic micro-organism growth or toxin formation; or
- Garlic-in-oil mixtures that are not modified so that they are unable to support pathogenic micro-organism growth or toxin formation.⁵

Foods that could be cottage food products (because they are not potentially hazardous foods) are:

- Loaf breads, rolls, biscuits;
- Cakes, pastries, and cookies;
- Honey;
- Jams, jellies, and preserves;
- Fruit pies and dried fruits;
- Dry herbs, seasonings, and mixtures;
- Homemade pasta;
- Cereals, trail mixes, and granola;
- Coated or uncoated nuts;
- Vinegar and flavored vinegars; and
- Popcorn and popcorn balls.⁶

Under s. 500.80, F.S., cottage food operations are exempt from food safety production standards, are not subject to inspection by a governmental entity, and are not required to meet state permitting requirements under s. 500.12, F.S. However, cottage food operations must comply with the cottage food law and limit annual gross sales of cottage food products to less than \$15,000. A cottage food operation must provide the department with written documentation to verify its annual gross sales upon the department's request to do so.

³ Florida Department of Agriculture and Consumer Services, *Food Establishment Inspections*, <http://www.freshfromflorida.com/Divisions-Offices/Food-Safety/Business-Resources/Food-Establishment-Inspections> (last visited Mar. 29, 2017).

⁴ Sections 500.03(j), (k), and 500.80, F.S.

⁵ See Department of Agriculture and Consumer Services, *Division of Food Safety: Cottage Food Legislation Signed into Law* (Feb. 2014), available at: <https://www.freshfromflorida.com/content/download/10223/137606/CottageFoodAdvisoryWithFormNumber.pdf> (last visited Mar. 29, 2017).

⁶ *Id.*

Cottage food operators are currently prohibited from selling, or offering to sell, cottage food products over the Internet, by mail order, or at wholesale.

Cottage food products must be prepackaged with a label that contains:

- The name and address of the cottage food operation;
- The name of the cottage food product;
- The ingredients of the cottage food product, in descending order of predominance by weight;
- The net weight or net volume of the cottage food product;
- Allergen information as specified by federal labeling requirements;
- Appropriate nutritional information (if any nutritional claim is made) as specified by federal labeling requirements;⁷ and
- The statement, “Made in a cottage food operation that is not subject to Florida’s food safety regulation” printed in 10-point type in a color in a clear contrast to the background of the label.

Additionally, current law provides that:

- A cottage food operation may only sell cottage food products that are stored on the premises of the operation;
- Cottage food operations are not exempt from any state or federal tax law, rule, regulation, or certificate that applies to all cottage food operations; and
- A cottage food operation must comply with all applicable county and municipal laws and ordinances regulating the preparation, processing, storage, and sale of cottage food products by a cottage food operation or from a person’s residence.

The department may investigate complaints that a cottage food operation has violated an applicable provision of state food products law⁸ or rule adopted under such law. Upon receiving a complaint, an officer or employee of the department may inspect the cottage food operation’s premises to determine compliance with applicable to state law and departmental rules. An operation’s refusal to permit an authorized officer or employee to enter and inspect the premises is grounds for administrative disciplinary action under s. 500.121, F.S.⁹

State law regarding cottage food operations does not apply to any person operating under a food permit issued pursuant to s. 500.12, F.S.¹⁰

Cottage Food Sales in Other States

Many states have adopted laws regarding cottage food operations and production, including Alabama in 2014, Texas and California in 2013, and Michigan in 2010.¹¹ While regulation varies

⁷ See C.F.R. Title 21, Part 101. Available at: <http://www.ecfr.gov/cgi-bin/text-idx?SID=b8a6ba2f29a50685c15ebddd8bbd56aa&mc=true&node=pt21.2.101&rgn=div5> (last visited March 8, 2017).

⁸ Chapter 500, F.S.

⁹ Disciplinary action includes suspension procedures provided for in s. 500.12, F.S., and may include an administrative fine in the Class II category pursuant to s. 570.971, F.S.

¹⁰ Permits under this section are required for any person who operates a food establishment or retail food store.

¹¹ PickYourOwn.Org, *Cottage Food Laws by State: Selling Your Homemade and Home-Canned Foods* (Mar. 29, 2017), <http://www.pickyourown.org/CottageFoodLawsByState.htm> (last visited Mar. 29, 2017).

from state to state, many states have adopted limits to annual gross sales or income from cottage food products including:

- Alabama and Michigan limit annual gross income from sales to \$20,000;¹²
- Texas limits annual gross sales to \$50,000;¹³ and
- California limited annual gross sales starting with \$35,000 in 2013, \$45,000 in 2014, and \$50,000 beginning in 2015.¹⁴

III. Effect of Proposed Changes:

Section 1 amends s. 500.80, F.S., to increase the annual gross sales limit from \$15,000 to \$50,000 for cottage food operations; this will allow larger businesses to qualify and operate as a cottage food operation. The bill also allows a cottage food operation to sell, offer for sale, and receive payments for sale over the Internet, if the purchased cottage food products are delivered in person directly to the consumer or to a specific event.

Section 2 provides an effective date of July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

People engaged in cottage food operations will be able to expand their volume of sales from \$15,000 to \$50,000 per year. They may also be able to make sales more efficiently over the Internet.

¹² Alabama Department of Agriculture and Industries, Farmer's Market Authority, Home Processed Products & Cottage Food Law, available at http://fma.alabama.gov/pdfs/Brochure_HomeProcessed-CottageFoodLaw.pdf (last visited Mar. 29, 2017). See also, MCLS s. 289.4102.

¹³ Tex. Health and Safety Code, s. 437.001.

¹⁴ Cal. Health and Safety Code s. 114365.2.

C. Government Sector Impact:

The Division of Food Safety indicates that the increase in gross sales for cottage food operators may result in increased food safety health events and complaints, and therefore cause a rise in investigations and prosecutions of cottage food operators.¹⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends s. 500.80, F.S.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Agriculture on March 21, 2017:

The committee substitute reinstates an annual sales volume limitation for cottage food operators. The new limit is \$50,000 in annual sales. The CS also allows Internet sales, offers for sale, and payments over the Internet as long as the cottage food products are delivered in person directly to the consumer or to a specific event.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹⁵ Department of Agriculture and Consumer Services, Division of Food Safety, *SB 1136 Agency Analysis* (Mar. 8, 2017) (on file with the Agriculture Committee).

By the Committee on Agriculture; and Senator Lee

575-02671-17

20171136c1

A bill to be entitled

An act relating to cottage food operations; amending s. 500.80, F.S.; increasing the annual gross sales limitation for exempting cottage food operations from certain food and building permitting requirements; authorizing cottage food products to be advertised, sold, and paid for over the Internet; requiring such products to be delivered in person directly to the consumer or to a specific event venue; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (1) and subsection (2) of section 500.80, Florida Statutes, are amended to read:

500.80 Cottage food operations.—

(1) (a) A cottage food operation must comply with the applicable requirements of this chapter but is exempt from the permitting requirements of s. 500.12 if the cottage food operation complies with this section and has annual gross sales of cottage food products that do not exceed \$50,000 ~~\$15,000~~.

(2) A cottage food operation may sell, offer for sale, and accept payment for cottage food products over the Internet, but such products must be delivered in person directly to the consumer or to a specific event venue. A cottage food operation may not sell, ~~or~~ offer for sale, or deliver cottage food products ~~over the Internet,~~ by mail order, or at wholesale.

Section 2. This act shall take effect July 1, 2017.



The Florida Senate

Committee Agenda Request

To: Senator Bill Montford, Chair
Committee on Commerce and Tourism

Subject: Committee Agenda Request

Date: March 21, 2017

I respectfully request that **Senate Bill #1136**, relating to Cottage Food Operations, be placed on the:

- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda.

A handwritten signature in blue ink that reads "Tom Lee".

Senator Tom Lee
Florida Senate, District 20

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/3/17

Meeting Date

1136

Bill Number (if applicable)

Topic Cottage Foods

Name Ari Bargil

Job Title Attorney, Institute for Justice

Address 2 S. Biscayne Blvd. #3/80

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33131

Zip

Phone 305-721-1600

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Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Institute for Justice

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

COMMITTEE: Commerce and Tourism
ITEM: CS/SB 1136
FINAL ACTION: Favorable
MEETING DATE: Monday, April 3, 2017
TIME: 1:30—3:30 p.m.
PLACE: 110 Senate Office Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: SB 1482

INTRODUCER: Senator Garcia and Latvala

SUBJECT: Transactions with Foreign Financial Institutions

DATE: March 31, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	Favorable
2.	Little	McKay	CM	Favorable
3.			RC	

I. Summary:

SB 1482 mandates certain reporting requirements on Florida-chartered financial institutions that maintain correspondent or payable-through accounts with any foreign financial institution owned by a country under a U.S. Treasury sanctions program. The Florida-chartered financial institution must identify and report the source of every transaction that passes through the foreign correspondent account to their state regulator, the Office of Financial Regulation.

The bill also requires the Florida-chartered financial institution to certify that the source does not involve any “confiscated property” as defined in the Cuban Liberty and Democratic Solidarity Act of 1996 (Libertad Act). For purposes of the Libertad Act, the term “confiscated” means:

- The nationalization, expropriation, or other seizure by the Cuban Government or ownership or control of property, on or after January 1, 1959, without the property having been returned or adequate and effective compensation provided; or without the claim to the property having been settled pursuant to an international claims settlement agreement or other mutually accepted settlement procedure; and
- The repudiation by the Cuban Government of, the default by the Cuban Government on, or the failure of the Cuban Government to pay, on or after January 1, 1959, a debt of any enterprise which has been nationalized, expropriated, or otherwise taken by the Cuban Government; a debt which is a charge on property nationalized, expropriated, or otherwise taken by the Cuban Government; or a debt which is incurred by the Cuban Government in satisfaction or settlement of a confiscated property claim.

The Office of Financial Regulation charters and regulates entities that engage in financial institution business in Florida, in accordance with the Florida Financial Institutions Codes, and ensures Florida-chartered financial institutions comply with safety and soundness provisions and federal requirements, such as the federal Bank Secrecy Act of 1970 and economic and trade sanctions administered by the U.S. Treasury.

The bill has an indeterminate fiscal impact on the Office of Financial Regulation.

II. Present Situation:

The global financial system, trade flows, and economic development rely on correspondent banking relationships. Correspondent banking is the provision of banking services between two unrelated financial institutions, whether domestic or international. Correspondent banking relationships are essential to the function of the U.S. and international financial system, facilitating everything from remittances, development, trade finance, and economic development.

Foreign correspondent accounts are a gateway into the U.S. financial system by facilitating everything from remittances, development, trade finance, and economic development. To protect this system from abuse, U.S. financial institutions must comply with the BSA provisions, which are designed to prevent, detect, and prosecute terrorism activities and international money laundering and the sanctions programs administered by the Treasury Department's Office of Foreign Assets Control (OFAC).

Federal Bank Secrecy Act of 1970 (BSA)

The BSA established the regulatory framework to prevent and detect money laundering. This legislation was in response to growing concerns regarding money being “laundered” to conceal illegal activity, including the crimes that generate the money itself, such as drug trafficking. The 2001 USA PATRIOT ACT strengthened provisions of the BSA.¹ The 2001 law included additional measures to prevent, detect, and prosecute terrorism activities and international money laundering. One of the central goals of the USA PATRIOT ACT is to protect access to the U.S. financial system by requiring certain records, reports, and due diligence programs for foreign correspondent accounts. The BSA requires traditional banks and other entities, as defined by federal regulations, to establish written anti-money laundering (AML) programs, maintain certain records, and file reports that have a high degree of usefulness in criminal and regulatory proceedings.

The Financial Crimes Enforcement Network (FinCEN), a bureau of the Treasury Department, is responsible for administering the BSA in furtherance of its mission to safeguard the U.S. financial system from illicit use. The Federal Banking Agencies (FBAs) have the responsibility and authority to conduct examinations of depository institutions for compliance with the BSA and OFAC requirements in order to ensure the safety and soundness of the U.S. financial system. Together, these agencies are responsible for implementing the regulatory and supervisory framework that is essential for promoting compliance with these obligations and keeping the U.S. banking system safe and sound. Federal and state banking regulators also oversee these recordkeeping and reporting requirements as part of their respective examination duties.

In addition, if Treasury finds “reasonable grounds” exist for concluding that a non-U.S. jurisdiction or any financial institution operating outside of the U.S. is of “primary money laundering concern,” Treasury may subject U.S. financial institutions to special measures,

¹ Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT ACT) Pub. L. No. 107-56.

including prohibitions or conditions on opening or maintaining certain correspondent or payable-through accounts.² Specifically, the BSA/AML laws require U.S. financial institutions to take certain customer identification and due diligence measures regarding correspondent and payable-through accounts, if the Treasury determines a transaction that involves jurisdictions outside of the U.S. is of “primary money laundering concern.”³ Federal and state banking regulators also oversee these recordkeeping and reporting requirements as part of their respective examination duties.

FinCEN has estimated there are approximately 300 banks in the U.S. that provide correspondent banking services to foreign financial institutions. When these U.S. banks receive funds or instructions for a funds transfer from a foreign correspondent bank, they likely do not have a relationship with the originator of the payment. For this reason, conducting appropriate due diligence on the foreign correspondent bank is critical to managing the vulnerability associated with this product. The complexity and volume of transactions that flow through U.S. correspondent accounts, coupled with the varying (often limited) recordkeeping requirements of funds transfer systems in different countries, increase the likelihood that some correspondent accounts can be exploited to facilitate the flow of illicit proceeds into or through the U.S. financial system.⁴

The U.S. financial institutions that maintain correspondent accounts for foreign financial institutions (FFIs) are required to establish appropriate, specific, and risk-based due diligence policies, procedures, and processes that are designed to assess and manage the risks inherent with these relationships. To comply with their legal obligations, U.S. depository institutions must monitor transactions related to these accounts to detect and report suspicious activities. These policies, procedures, and processes will depend on the level of risk posed by the correspondent FFI. Such risks can vary depending on the FFI’s strategic profile, including its size and geographic locations, the products and services it offers, and the markets and customer bases it serves.⁵

The Office of Foreign Assets Control (OFAC) and U.S. Sanctions Programs

The OFAC administers and enforces numerous economic and trade sanctions, based on U.S. foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the United States’ national security, foreign policy, or economy. The OFAC acts under Presidential wartime and national emergency powers, as well as various authorities granted by specific legislation, to impose

² 31 U.S.C. s. 5318A(e)(1)(B) and (C). A “correspondent account” is defined as an account established to receive deposits from, make payments on behalf of a foreign financial institution, or handle other financial transactions related to such institution. “Payable-through account” means an account, including a transaction account (as defined in section 19(b)(1)(C) of the Federal Reserve Act), opened at a depository institution by a foreign financial institution by means of which the foreign financial institution permits its customers to engage, either directly or through a subaccount, in banking activities usual in connection with the business of banking in the United States.

³ 31 U.S.C. s. 5318A(b).

⁴ U.S. Treasury, *2015 National Money Laundering Risk Assessment*, available at <https://www.treasury.gov>. (last viewed Mar. 23, 2017).

⁵ See <https://www.treasury.gov/press-center/press-releases/Documents/Foreign%20Correspondent%20Banking%20Fact%20Sheet.pdf> (last viewed Mar. 30, 2017).

controls on transactions and to freeze assets under U.S. jurisdiction. These sanctions can be either comprehensive or selective, as well as program-based (e.g., counter narcotics trafficking, counterterrorism, or cyber-related) or geographically targeted, using the blocking of assets and trade restrictions to accomplish foreign policy and national security goals. Currently, the OFAC administers over 20 country-specific sanctions programs, including Cuba.⁶

The OFAC regulations are broad in scope. Unlike the BSA, the laws and OFAC-issued regulations apply not only to U.S. banks, their domestic branches, agencies, and international banking facilities, but also to their foreign branches, and often overseas offices and subsidiaries. All U.S. persons (including U.S. citizens and permanent resident aliens regardless of where they are located) and entities within the U.S., all U.S. incorporated entities and their foreign branches must comply with the OFAC regulations. U.S. persons, including U.S. financial institutions, are required to “block” (freeze) targeted property which means that title to the blocked property remains with the target, but the exercise of powers and privileges normally associated with ownership is prohibited without the OFAC’s authorization. Blocking immediately imposes an across-the-board prohibition against transfers or dealings of any kind with regard to the property.⁷ If a bank knows or has reason to know that a target is party to a transaction, the bank’s processing of the transaction would be unlawful.⁸

In addition, the OFAC regulations prohibit financial institutions from doing business with specific individuals, groups, and entities that are owned or controlled by, or acting for or on behalf of, targeted countries, known as the Specially Designated Nationals (SDNs) and Blocked Persons List. The OFAC can designate individuals and entities as SDNs and Blocked Persons, regardless whether their country of residence is listed as a state sponsor of terrorism.

U.S. Embargo against Cuba Legislation and Recent Events

Since the 1960s, the United States has maintained an embargo on Cuba that restricts trade, travel, and financial transactions through various laws, regulations, and presidential proclamations.

Trading with the Enemy Act of 1917 (TWEA)

The TWEA grants the President broad authority to impose embargoes on foreign countries during times of war and grants this authority during times of a presidentially declared national emergency. The International Emergency Economic Powers Act of 1977 amended section 5(b) of TWEA, again limiting the President’s embargo authority to times of war, but allowing the President’s continued exercise of his national emergency authority with respect to the ongoing Cuba embargo. This act required that the President determine on an annual basis whether maintaining the Cuba embargo is in the national interest of the United States.

⁶ For a list of current OFAC sanctions programs, see U.S. Department of the Treasury, *Resource Center: Sanctions Programs and Country Information*, at: <https://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx> (last visited March 30, 2017).

⁷ U.S. Department of the Treasury, *OFAC FAQs: General Questions*, at https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_general.aspx#basic (last visited March 30, 2017).

⁸ U.S. Department of the Treasury, *OFAC FAQs: Sanctions Compliance – Additional Questions from Financial Institutions #44 and 45*, https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_compliance.aspx#other_fi (last visited March 30, 2017).

The Cuban Assets Control Regulations (CACR), which the Treasury issued in 1963 under the President's authority under TWEA and the Foreign Assistance Act, define "confiscated property"⁹ and prohibits U.S. nationals,¹⁰ permanent resident aliens, and U.S. agencies from knowingly making a loan, extending credit or providing other financing for the purpose of financing transactions involving "confiscated property" the claim to which is owned by a U.S. national, except for financing by a U.S. national owning such a claim for a transaction permitted under U.S. law.¹¹

Cuban Liberty and Democratic Solidarity Act of 1996 (Libertad Act)

The Libertad Act defines and codifies the embargo as it was in effect on March 1, 1996. The Libertad Act authorizes the President to suspend the embargo only if he or she determines that a transition Cuban government is in power. In addition, the Libertad Act prohibits U.S. persons, permanent resident aliens, and U.S. agencies from knowingly financing any transactions involving property of U.S. nationals confiscated by the Cuban government. The Libertad Act permits U.S. nationals to file suit in U.S. courts against persons trafficking in such confiscated property (this authority has been suspended by the President since enactment).¹² Claims of U.S. nationals against the Cuban government may be certified under Title V of the International Claims Settlement Act of 1949 to the Foreign Claims Settlement Commission within the U.S. Department of Justice. Since its inception, the commission has approved almost \$2 billion awards for claims against the Cuban government. However, the U.S. has not settled these claims with Cuba.

Recent Events

On December 17, 2014, President Obama announced a major shift in U.S. policy on Cuba intended to increase engagement between the two countries. Specifically, the administration's new policy called for establishing diplomatic relations with Cuba, authorizing expanded commercial sales and exports from the United States of certain goods and services, and facilitating authorized financial transactions between the United States and Cuba. On May 29, 2016, the U.S. removed Cuba from the terrorism list.

Subsequently, the U.S. government has made a series of regulatory changes to the CACR since the administration announced its new Cuba policy. These regulatory changes have eased restrictions on travel, financial services, and trade with Cuba. In the area of financial services, the federal Department of Treasury has modified the CACRs¹³ to allow credit and debit cards

⁹31 C.F.R. ss. 515.311(b) and 515.336.

¹⁰The term U.S. national generally includes: (1) A subject or citizen of the United States or any person who has been domiciled in or a permanent resident of the United States; (2) A United States partnership, association, corporation, or other organization; (3) Any organization's office or other sub-unit that is located within the United States; (4) Any person to the extent that such person was or has been acting or purporting to act directly or indirectly for the benefit or on behalf of any national of the United States; (5) Any other person who there is reasonable cause to believe is a "national," as so defined. *See* 31 C.F.R. s. 515.302.

¹¹31 C.F.R. s. 515.208.

¹² Claims of U.S. nationals against the Cuban government may be certified under Title V of the International Claims Settlement Act of 1949 to the Foreign Claims Settlement Commission within the U.S. Department of Justice. Since its inception, the commission has approved almost \$2 billion awards for claims against the Cuban government. However, the U.S. has not settled these claims with Cuba.

¹³ 31 C.F.R. s. 515.584.

issued by U.S. banks to be used in Cuba. Treasury has also modified the regulations to allow U.S. banking institutions to open and maintain bank accounts in the United States for Cuban nationals in Cuba to use for authorized transactions.

Further, U.S. banking institutions may process payments in which Cuba or a Cuban national has an interest. These changes authorize funds transfers from a bank outside the U.S. that pass through one or more U.S. financial institutions before being transferred to a bank outside the U.S., where neither the originator nor the beneficiary is a person subject to U.S. jurisdiction.¹⁴ A U.S. banking institution may process U.S. dollar monetary instruments, including cash and travelers' checks, presented indirectly by Cuban financial institutions. Additionally, correspondent accounts at third-country financial institutions used for such transactions may now be denominated in U.S. dollars.¹⁵ United States banking institutions may process transactions originating and terminating outside of the U.S. if neither the originator nor the beneficiary is a person subject to U.S. jurisdiction.

In July 2015, subsequent to the CACR changes, a Florida-chartered financial institution, Stonegate Bank, announced it was establishing a correspondent banking relationship with Banco Internacional de Comercio, a bank owned by the Cuban government. To date, Stonegate Bank's correspondent relationship with Banco Internacional de Comercio is strictly limited to U.S. embassy business.¹⁶

The Florida Office of Financial Regulation (OFR)

The OFR charters and regulates entities that engage in financial institution business in Florida, in accordance with the Florida Financial Institutions Codes (Codes), and ensures Florida-chartered financial institutions comply with state and federal requirements for safety and soundness, as well as the BSA. In addition, the OFR regulates international banking corporations (IBCs) that transact business in Florida. The OFR does not regulate federally chartered financial institutions or financial institutions that are chartered and regulated in other states. In addition, the OFR does not regulate institutions that are chartered and regulated by foreign institutions, except to the extent those foreign institutions seek to engage in the business of banking or trust business in Florida, pursuant to ch. 663, F.S.

State Regulations for Correspondent Accounts and Payable-Through Accounts, and Transactions Relating to Iran or Terrorism

Each financial institution chartered in Florida that maintains a correspondent account or a payable-through account with an FFI must establish due diligence policies, procedures, and controls reasonably designed to detect whether the United States Secretary of the Treasury has found that the foreign financial institution knowingly:¹⁷

- a) Facilitates the efforts of the Government of Iran, including efforts of Iran's Revolutionary Guard Corps, to acquire or develop weapons of mass destruction or their delivery systems;

¹⁴31 C.F.R. s. 515.584(d).

¹⁵31 C.F.R. s. 515.584(g).

¹⁶ Mimi Whitefield, *Broward's Stonegate Bank makes a banking breakthrough in Cuba*, MIAMI HERALD (Jul. 22, 2015), <http://www.miamiherald.com/news/business/article28072318.html> (last visited Mar. 30, 2017).

¹⁷ Section 655.968, F.S.

- b) Provides support for an organization designated by the United States as a foreign terrorist organization;
- c) Facilitates the activities of a person who is subject to financial sanctions pursuant to a resolution of the United Nations Security Council imposing sanctions on Iran;
- d) Engages in money laundering to carry out any activity in this list;
- e) Facilitates efforts by the Central Bank of Iran or any other Iranian financial institution to carry out an activity in this list; or
- f) Facilitates a significant transaction or provides significant financial services for Iran's Revolutionary Guard Corps or its agents or affiliates, or any financial institution, whose property or interests in property are blocked pursuant to federal law in connection with Iran's proliferation of weapons of mass destruction, or delivery systems for those weapons, or Iran's support for international terrorism.

Additionally, each Florida-chartered financial institution must:

- Annually certify that the financial institution has adopted and substantially complies with the due diligence policies, procedures, and controls required by s. 655.968, F.S., and the rules adopted thereunder;¹⁸ and
- Certify that to the best knowledge of the financial institution, the financial institution does not maintain a correspondent account or a payable-through account with an FFI that knowingly engages in any act described above.¹⁹

Florida Control of Money Laundering in Financial Institutions Act

The Florida Control of Money Laundering in Financial Institutions Act codifies federal BSA/AML recordkeeping and reporting requirements for Florida-chartered financial institutions, and sets forth administrative remedies, criminal sanctions, and civil money penalties that are enforced by the OFR.²⁰ In 2014, the Legislature amended the act to codify the requirements of the Federal USA PATRIOT Act and the Office of Foreign Asset Control, which allows the OFR to enforce these provisions.

Competitive Equality

The Codes contain a unique provision that ensures competitive equality for Florida-chartered financial institutions with their nationally-chartered counterparts. If a state law places a Florida-chartered financial institution at a competitive disadvantage with their nationally chartered counterparts, the codes authorizes the OFR to grant Florida-chartered financial institutions the authority to make any loan or investment or exercise any power which they could make or exercise as if they were nationally chartered, and provides they are entitled to the same privileges and protections granted to their national counterparts.²¹ In addition, this provision states:

In issuing an order or rule under this section, the office or commission shall consider the importance of maintaining a competitive dual system of financial institutions and whether such an order or rule is in the public interest.

¹⁸See Rule 69U-100.964, F.A.C.

¹⁹ Section 655.968(4), F.S.

²⁰ Section 655.50, F.S.

²¹ Section 655.061, F.S.

III. Effect of Proposed Changes:

Section 1 creates s. 655.969, F.S., to require Florida-chartered financial institutions that maintain correspondent or payable-through accounts with any foreign financial institution owned by a country under a U.S. Treasury sanctions program to identify and report the source of every transaction that passes through the foreign correspondent account to the OFR within 5 business days.

The bill also requires the Florida-chartered financial institution to certify that the source does not involve any “confiscated property” as defined in the Libertad Act. For purposes of the Libertad Act, the term “confiscated” means:

- The nationalization, expropriation, or other seizure by the Cuban Government or ownership or control of property, on or after January 1, 1959, without the property having been returned or adequate and effective compensation provided; or without the claim to the property having been settled pursuant to an international claims settlement agreement or other mutually accepted settlement procedure; and
- The repudiation by the Cuban Government of, the default by the Cuban Government on, or the failure of the Cuban Government to pay, on or after January 1, 1959, a debt of any enterprise which has been nationalized, expropriated, or otherwise taken by the Cuban Government; a debt which is a charge on property nationalized, expropriated, or otherwise taken by the Cuban Government; or a debt which is incurred by the Cuban Government in satisfaction or settlement of a confiscated property claim.²²

The term “property” means:

- Any property (including patents, copyrights, trademarks, and any other form of intellectual property), whether real, personal, or mixed, and any present, future; or
- Contingent right, security, or other interest therein, including any leasehold interest.²³

Section 2 provides the bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

²² 22 U.S.C. s. 6023(4).

²³ 22 U.S.C. s. 6023(12). The definition of “property” excludes real property used for residential purposes unless, as of March 12, 1996, the claim to the property is held by a U.S. national and the claim has been certified under title V of the International Claims Settlement Act or the property is occupied by an official of the Cuban Government or the ruling political party in Cuba.

D. Other Constitutional Issues:

Two federal decisions have addressed state legislation regarding Florida-Cuba relations:

In 2008, Florida enacted amendments to the Florida Sellers of Travel Act, which placed restrictions on travel businesses in Florida, as well as businesses providing services to individuals traveling to or sending humanitarian aid to families in certain designated “terrorist states.” In *ABC Charters, Inc. v. Bronson*, 519 F.Supp. 2d 1272 (S.D. Fla. 2008), a federal district court found that the law was aimed principally, if not solely, to travel to Cuba. The court enjoined enforcement of the Travel Act Amendments, concluding they will likely be found unconstitutional under the Foreign Affairs Provisions, the Supremacy Clause, the Foreign Commerce Clause, and the Interstate Commerce Clause of the U.S. Constitution.

In 2012, Florida enacted a “Cuba amendment” to s. 287.4725, F.S., to prohibit companies engaged in business operations in Cuba from bidding on, submitting a proposal for, or entering into or renewing a contract with an agency or local governmental entity for goods or services of \$1 million or more. In *Odebrecht Const., Inc. v. Secretary, Fla. Dep’t of Transp.*, 715 F.3d 1268 (11th Cir. 2013), the Eleventh Circuit Court of Appeals affirmed an injunction prohibiting enforcement of the Cuba Amendment. The court found that the Cuba Amendment was preempted by extensive federal statutory and administrative sanctions and would undermine the President’s discretionary authority concerning federal policy toward Cuba.

The bill may implicate the same constitutional considerations as the statutes enjoined in the *ABC Charters* and *Odebrecht* decisions.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Indeterminate impact on affected financial institutions.

C. Government Sector Impact:

According to the OFR, the fiscal impact of the bill is indeterminate. Expenditures will be required to review and analyze documentation submitted, assess compliance with statute, and take action, if necessary, regarding non-compliance.²⁴

²⁴ Office of Financial Regulation, *SB 1482 Analysis* (Mar. 16, 2017) (on file with Senate Banking and Insurance Committee).

VI. Technical Deficiencies:

The OFR provided the following comments:

- The term “foreign financial institutions owned by a country under a sanctions program administered by the U.S. Department of Treasury” is ambiguous. First, “sanctions program” is not defined, and thus it is unclear how financial institutions will be able to identify the applicable accounts and comply with the requirements. Further, it is unclear whether “owned by” means chartered by that foreign country, or applies to only “state-owned” institutions.
- While the legislation appears to be specifically aimed at any correspondent account that touches or is associated with Cuba, as drafted, each state-chartered financial institution will have to identify and report the source of any transaction that runs through any correspondent account that it maintains with every institution in any country under a sanctions program, regardless of whether that country is Cuba. The requirement that the source of the transactions be certified is problematic insofar as state-chartered financial institutions are given no guidance to identify the “source of the transaction,” a term which is not defined.
- The legislation fails to provide specific agency action related to the collection of the information. The legislation fails to provide any purpose for reporting, and does not provide any protocol or guidance to the OFR regarding further required efforts, if any, once the information is received. The legislation does not provide for a public record exemption related to the reporting, although the information required to be reported may be the books and records of a financial institution. Financial institutions are required to keep their books and records confidential pursuant to s. 655.059, F.S.²⁵

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 655.969 of the Florida Statutes

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

²⁵ *Id.*

By Senator Garcia

36-01545-17

20171482__

A bill to be entitled

An act relating to transactions with foreign financial institutions; creating s. 655.969, F.S.; requiring financial institutions maintaining correspondent or payable-through accounts with certain foreign financial institutions to report and certify specified information to the Office of Financial Regulation; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 655.969, Florida Statutes, is created to read:

655.969 Correspondent accounts or payable-through accounts with a foreign financial institution; reporting.—A financial institution chartered in this state which maintains a correspondent account or a payable-through account with a foreign financial institution that is owned by a country under a sanctions program administered by the United States Department of the Treasury must, within 5 business days, identify and report to the office the source of every transaction that passes through the account and certify that the source does not involve any confiscated property, as defined in the Cuban Liberty and Democratic Solidarity Act of 1996, 22 U.S.C. 6023(4) and (12).

Section 2. This act shall take effect July 1, 2017.

The Florida Senate
State Senator René García
36th District

Please reply to:
□ District Office:
1490 West 68 Street
Suite # 201
Hialeah, FL 33014
Phone# (305) 364-3100

March 28th, 2017

The Honorable Bill Montford
Chairman, Committee on Commerce and Tourism
310 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Montford,

Please have this letter serve as my formal request to have **SB 1482: Transactions with Foreign Financial Institutions** be heard during the next scheduled Commerce and Tourism Committee Meeting. Should you have any questions or concerns, please do not hesitate to contact my office.

Sincerely,



State Senator René García
District 36

CC: Todd McKay
Gabriela Denton

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/3/17

Meeting Date

1482
Bill Number (if applicable)

Topic Foreign Transactions Bill

Name Anthony DiMarco

Job Title VP of port relations

Address 1001 Thomasville Rd

Street

City

Tallahassee FL

State

Zip

32305

Phone 224-2265

Email adimarco@floridabankers.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Bankers Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

The Florida Senate COMMITTEE VOTE RECORD

COMMITTEE: Commerce and Tourism
ITEM: SB 1482
FINAL ACTION: Favorable
MEETING DATE: Monday, April 3, 2017
TIME: 1:30—3:30 p.m.
PLACE: 110 Senate Office Building

FINAL VOTE								
Yea	Nay	SENATORS	Yea	Nay	Yea	Nay	Yea	Nay
		Gibson						
X		Hutson						
X		Latvala						
		Passidomo						
X		Rodriguez						
X		Young						
		Gainer, VICE CHAIR						
X		Montford, CHAIR						
5	0							
Yea	Nay	TOTALS	Yea	Nay	Yea	Nay	Yea	Nay

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: SB 1620

INTRODUCER: Senator Powell

SUBJECT: Deceptive and Unfair Trade Practices

DATE: March 30, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	Favorable
2.	Harmsen	McKay	CM	Favorable
3.			RC	

I. Summary:

SB 1620 exempts credit unions licensed under ch. 657, F.S., from the Florida Deceptive and Unfair Trade Practices Act. Other entities currently exempt from the act include Florida-licensed banks and savings and loans associations.

II. Present Situation:

Florida Deceptive and Unfair Trade Practices Act (FDUTPA)

History and Purpose of FDUTPA

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA) is a consumer and business protection measure that prohibits unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in trade or commerce.¹ The FDUTPA is based on federal law.² The state attorney or the Department of Legal Affairs may bring actions when it is in the public interest on behalf of consumers or governmental entities.³ The Office of the State Attorney may enforce violations of the FDUTPA if the violations take place in its jurisdiction. The Department of Legal Affairs has enforcement authority if the violation is multi-jurisdictional, the state attorney defers in writing, or the state attorney fails to act within 90 days after a written complaint is filed.⁴ Consumers may also file suit through private actions.⁵

¹ Chapter 73-124, L.O.F., and s. 501.202, F.S.

² D. Matthew Allen, et. al., *The Federal Character of Florida's Deceptive and Unfair Trade Practices Act*, 65 U. Miami L. Rev. 1083, Summer 2011.

³ Section 501.207, F.S. David J. Federbush, *FDUTPA for Civil Antitrust: Additional Conduct, Party, and Geographic Coverage; State Actions for Consumer Restitution*, 76 FLA. B.J. 52, December 2002, available at http://www.floridabar.org/divcom/jn/jnjournal01.nsf/c0d731e03de9828d852574580042ae7a/99aa165b7d8ac8a485256c8300791ec1!OpenDocument&Highlight=0,business,Division* (last visited on February 13, 2017).

⁴ Section 501.203(2), F.S.

⁵ Section 501.211, F.S.

Remedies under the FDUTPA

The Department of Legal Affairs and the State Attorney, as enforcing authorities, may seek the following remedies:

- Declaratory judgments;
- Injunctive relief;
- Actual damages on behalf of consumers and businesses;
- Cease and desist orders;
- Civil penalties of up to \$10,000 per willful violation; and
- Civil penalties of up to \$15,000 per willful violation where certain aggravating factors are found.⁶

Remedies for private parties are limited to:

- A declaratory judgment and an injunction where a person is aggrieved by a FDUTPA violation; and
- Actual damages, attorney fees and court costs, where a person has suffered a loss due to a FDUTPA violation.⁷

Exemptions under the FDUTPA

FDUTPA exempts certain entities from its governance, including:⁸

- Any person or activity regulated under laws administered by the Office of Insurance Regulation of the Financial Services Commission (OIR);
- Banks and savings and loan associations regulated by the Office of Financial Regulation of the Financial Services Commission (OFR);
- Banks or savings and loan associations regulated by federal agencies; or
- Any person or activity regulated under the laws administered by the former Department of Insurance, which are now administered by the Department of Financial Services (DFS).

Although FDUTPA exempts the above entities that would otherwise be regulated, it does not currently exempt credit unions.

Federal Unfair and Deceptive Trade Practices Laws

The Federal Trade Commission's (FTC's) unfair and deceptive trade practices regulations prohibit unfair or deceptive acts or practices in or affecting commerce.⁹ However, like FDUTPA, the FTC's regulations exempt banks, savings and loan institutions, or federally-chartered credit unions.¹⁰

⁶ Sections 501.207(1), 501.208, and 501.2075, F.S. Civil Penalties are deposited into general revenue. Enforcing authorities may also request attorney fees and costs of investigation or litigation. *See also*, s. 501.2105, F.S.

⁷ Sections 501.211(1)-(2), and 501.2105 F.S.

⁸ Section 501.212(4), F.S.

⁹ 15 U.S.C. s. 45(a)(1).

¹⁰ 15 U.S.C. s. 45(a)(2).

The Dodd-Frank Act extends the prohibition of unfair, deceptive, or abusive acts (UDAAPs) to banks, credit unions, and other financial institutions.¹¹ The Consumer Financial Protection Bureau (CFPB) is the regulatory agency under the Dodd-Frank Act.¹² The CFPB has identified the following practices as probable UDAAPs:¹³

- Collection or assessment of a debt or any additional fee, interest, or charge in connection with a debt, which is not expressly authorized by the underlying loan;
- The taking of property without a legal right to do so;
- Causing a consumer's debt to be revealed to his or her employer or co-workers, without the consumer's consent to do so;
- Misrepresentation of a communication as from a government source or attorney; and
- Making false threats of lawsuits, arrest, or prosecution for non-payment of a debt.

Regulation of Credit Unions

Credit unions are financial institutions organized to encourage thrift among, and create sources of credit for, their members.¹⁴ Under the dual banking system in the United States, credit unions may be chartered under either state or federal law:

- The Florida Credit Union Act (act) governs the formation and duties of state-chartered credit unions, but ch. 655, F.S., provides guidance regarding the credit union's operations.¹⁵ State-chartered credit unions are regulated by the Florida OFR and the National Credit Union Association (NCUA), an independent federal agency.
- Federally-chartered credit unions are chartered under the Federal Credit Union Act of 1934¹⁶ and are regulated only by the NCUA.

In addition to its oversight of both state- and federally-chartered credit unions, the NCUA also operates and manages the National Credit Union Share Insurance Fund (NCUSIF), which insures share (deposit) accounts for members of all federally-chartered credit unions and most state-chartered credit unions.¹⁷ All state-chartered credit unions that operate in Florida must carry NCUSIF insurance.¹⁸ The standard maximum share insurance coverage amount for a credit union is \$250,000.¹⁹

Like banks, both state- and federally-chartered credit unions are subject to a number of regulations that provide some protections that overlap with FDUTPA, including the following:

¹¹ See 12 U.S.C. ss. 5481, 5531, and 5536(a); *see also* Consumer Financial Protection Bureau, *Compliance Bulletin and Policy Guidance 2016-02, Service Providers*, (Oct. 19, 2016), available at http://files.consumerfinance.gov/f/documents/102016_cfpb_OfficialGuidanceServiceProviderBulletin.pdf (last visited Mar. 30, 2017).

¹² 12 U.S.C. s. 5481(2).

¹³ *See supra* note 11.

¹⁴ *See, e.g.*, 12 U.S.C. s. 1752, and s. 657.003, F.S.

¹⁵ Ch. 80-258, Laws of Fla.; codified at ch. 657, F.S.

¹⁶ Public Law 73-467, codified as 12 U.S.C. s. 1751 *et seq.*

¹⁷ Federally-chartered credit unions must be insured through NCUSIF, and state-chartered credit unions may be insured through NCUSIF, though some state-chartered credit unions may be insured by private insurance or guaranty corporations. *See* NCUA, *Your Insured Funds*, available at <https://www.ncua.gov/Legal/GuidesEtc/GuidesManuals/NCUAYourInsuredFunds.pdf> (last visited Mar. 29, 2017).

¹⁸ Sections 657.005(7), 657.008(5)(a)2., and 657.033(9), F.S.

¹⁹ *See supra* note 12.

- Truth in Savings Act (TISA)²⁰ – TISA enables credit union members to make informed decisions about accounts at credit unions by requiring credit unions to disclose information such as fees, dividend rates, and annual percentage yield regarding its accounts.²¹ TISA also prohibits credit unions from advertising in a misleading or inaccurate manner.²²
- Accuracy of advertising requirement – Credit unions insured through NCUSIF “may [not] use any advertising, or make any representation which is inaccurate or deceptive... [or] misrepresents its services, contracts, or financial condition.”²³
- Equal Credit Opportunity (ECOA)²⁴ and Fair Housing (FHA)²⁵ Acts – The ECOA prohibits discrimination in any aspect of a credit transaction on the basis of race, color, religion, national origin, sex, marital status, age, the fact that an applicant’s income derives from any public assistance program, or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The FHA works in conjunction with the ECOA to prohibit discrimination by anyone who is in the business of providing loans for housing.²⁶
- Fair Credit Reporting Act (FCRA)²⁷ – The FCRA defines the responsibilities and liabilities of those who provide information to, and access data from, a consumer reporting agency (CRA).²⁸ The FCRA promotes accuracy, fairness, and privacy of information held by CRA’s by:
 - Regulating the consumer reporting industry;
 - Placing disclosure obligations on users of consumer reports;
 - Ensuring fair, timely, and accurate reporting of credit information;
 - Restricting the use of reports on consumers; and
 - Requiring the deletion of obsolete information, in certain situations.²⁹
- Truth in Lending Act (TILA)³⁰ – TILA requires clear and conspicuous disclosures relating to the terms and costs of various forms of consumer credit.³¹
- Real Estate Settlement Procedures Act (RESPA)³² – RESPA requires timely disclosures regarding the nature and costs of the real estate settlement process. For example, a lender must provide an applicant with a good faith estimate no more than 3 business days after a lender receives an application.³³
- Privacy of consumer financial information under the Gramm-Leach-Bliley Act (GLBA)³⁴ – The GLBA generally prohibits a financial institution from disclosing a consumer’s nonpublic personal information to nonaffiliated third parties, unless the institution satisfies notice and

²⁰ 12 CFR Part 707.

²¹ 12 CFR s. 707.1(b); 12 CFR ss. 707.4-.6.

²² 12 CFR s. 707.8(a)(1).

²³ 12 CFR s. 740.2.

²⁴ 12 CFR Part 1002.

²⁵ 42 U.S.C. s. 3601 *et seq.*

²⁶ NCUA, *Consumer Compliance Manual: Fair Housing Act*, available at <https://www.ncua.gov/regulation-supervision/Pages/manuals-guides/consumer-compliance.aspx> (last visited Mar. 29, 2017).

²⁷ 15 U.S.C. s. 1681 *et seq.*

²⁸ NCUA, *Consumer Compliance Manual: Fair Credit Reporting Act*, available at <https://www.ncua.gov/regulation-supervision/Pages/manuals-guides/consumer-compliance.aspx> (last visited Mar. 29, 2017).

²⁹ *Id.*

³⁰ 12 CFR Part 1026.

³¹ *Id.* at ss. 1026.1(b) and 1026.5(a).

³² 12 CFR Part 1024.

³³ *Id.* at s. 1024.7 and Appendix C.

³⁴ 15 U.S.C. s. 6801 *et seq.*

opt-out requirements, and the consumer has not elected to opt-out of the disclosure.³⁵ Under the GLBA, an institution must also give customers notice of its privacy policies and practices. Rules and regulations have been issued to implement provisions of the GLBA.³⁶

- CFPB’s prohibition on unfair, deceptive, or abusive practices (UDAAPs)³⁷ – The CFPB regulates the offering and provision of consumer financial products or services,³⁸ and that enforces many of the above-mentioned regulations. The CFPB prohibits banks, financial institutions, and state- and federally-chartered credit unions from committing or engaging in UDAAPs in connection with any transaction with a consumer.^{39, 40}
- Federal Trade Commission’s (FTC’s) prohibition on unfair or deceptive acts or practices.⁴¹ State-chartered credit unions are not expressly exempt from the FTC’s authority to prosecute unfair or deceptive acts. However, as noted above, the CFPB has broad authority to enforce a prohibition on unfair, deceptive, or abusive acts or practices in relation to both state- and federally-chartered credit unions.

III. Effect of Proposed Changes:

Section 1 amends s. 501.212, F.S., to exempt credit unions regulated by the OFR under ch. 657, F.S., and credit unions regulated by federal agencies, from the FDUTPA. Current law exempts banks and savings and loan associations regulated by the OFR or federal agencies from the FDUTPA.

Section 2 provides an effective date of July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

³⁵ *Id.*

³⁶ 12 CFR s. 716.1 and Part 1016.

³⁷ 12 U.S.C. s. 5536(a)(1).

³⁸ 12 U.S.C. ss. 5481(14) and 5491(a).

³⁹ 12 U.S.C. s. 5531(a). *See also* s. 5536(a)(1) (prohibiting “any covered person or service provider – (A) to offer or provide to a consumer any financial product or service not in conformity with Federal consumer financial law, or otherwise commit any act or omission in violation of a Federal consumer financial law; or (B) to engage in any unfair, deceptive, or abusive act or practice”).

⁴⁰ 12 U.S.C. ss. 5481(5), (6), and (15).

⁴¹ 15 U.S.C. s. 45(a).

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Credit Unions regulated under Florida law will no longer be subject to litigation costs related to claims under the FDUTPA.

C. Government Sector Impact:

The Department of Legal Affairs may see reduced litigation under FDUTPA relating to credit unions.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 501.212 of the Florida Statutes:

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By Senator Powell

30-01297-17

20171620__

A bill to be entitled

An act relating to deceptive and unfair trade practices; amending s. 501.212, F.S.; specifying that the Florida Deceptive and Unfair Trade Practices Act does not apply to credit unions regulated by the Office of Financial Regulation or federal agencies; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (4) of section 501.212, Florida Statutes, is amended to read:

501.212 Application.—This part does not apply to:

(4) (a) Any person or activity regulated under laws administered by+

~~(a)~~ the Office of Insurance Regulation of the Financial Services Commission;

(b) Banks, credit unions, and savings and loan associations regulated by the Office of Financial Regulation of the Financial Services Commission;

(c) Banks, credit unions, or savings and loan associations regulated by federal agencies; or

(d) Any person or activity regulated under the laws administered by the former Department of Insurance which are now administered by the Department of Financial Services.

Section 2. This act shall take effect July 1, 2017.



The Florida Senate

Committee Agenda Request

To: Senator Bill Montford, Chair
Committee on Commerce and Tourism

Subject: Committee Agenda Request

Date: March 27, 2017

I respectfully request that **Senate Bill #1620**, relating to Deceptive and Unfair Trade Practices, be placed on the:

- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda.

A handwritten signature in cursive script, appearing to read "Bobby Powell", is written over a horizontal line.

Senator Bobby Powell
Florida Senate, District 30

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

04/03/17

Meeting Date

1620

Bill Number (if applicable)

Topic Florida Deceptive and Unfair Trade Practices Act

Name Jared Ross

Job Title SVP, Governmental Affairs

Address 3692 Coolidge Ct.

Street

Tallahassee

City

FL

State

32311

Zip

Phone (850) 322-6956

Email jared.ross@scu.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Credit Union Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

COMMITTEE: Commerce and Tourism
ITEM: SB 1620
FINAL ACTION: Favorable
MEETING DATE: Monday, April 3, 2017
TIME: 1:30—3:30 p.m.
PLACE: 110 Senate Office Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: CS/SB 388

INTRODUCER: Regulated Industries Committee and Senator Hutson

SUBJECT: Beverage Law

DATE: March 31, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>McSwain</u>	<u>RI</u>	Fav/CS
2.	<u>Askey</u>	<u>McKay</u>	<u>CM</u>	Favorable
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 388 amends the “tied house evil” statute in s. 561.42, F.S., which prohibits a manufacturer or distributor from having a financial interest, directly or indirectly, in the establishment or business of a licensed vendor, and prohibits a manufacturer or distributor from giving gifts, loans or property, or rebates to retail vendors.

The bill exempts from the tied house evil prohibitions certain financial transactions negotiated at arm’s length for fair market value between a manufacturer of beer or malt beverages and a licensed alcoholic beverage vendor.

Such a financial transaction may not involve the sale or distribution of beer or malt beverages, may not limit the sale of beer or malt beverages from another manufacturer, must be with a vendor who operates a theme park, and must be registered with the Division of Alcoholic Beverages and Tobacco (division) in the Department of Business and Professional Regulation (DBPR).

The bill provides an effective date of July 1, 2017.

II. Present Situation:

In Florida, alcoholic beverages are regulated by the Beverage Law,¹ which regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors.² The division administers and enforces the Beverage Law.³

“Alcoholic beverages” are defined in s. 561.01, F.S., as “distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume.” “Malt beverages” are brewed alcoholic beverages containing malt.⁴

Section 561.14, F.S., specifies the license and registration classifications used in the Beverage Law.

- “Manufacturers” are those “licensed to manufacture alcoholic beverages and distribute the same at wholesale to licensed distributors and to no one else within the state, unless authorized by statute.”⁵
- “Distributors” are those “licensed to sell and distribute alcoholic beverages at wholesale to persons who are licensed to sell alcoholic beverages.”⁶
- “Importers” are those licensed to sell, or to cause to be sold, shipped, and invoiced, alcoholic beverages to licensed manufacturers or licensed distributors, and to no one else in this state; provided that ss. 564.045 and 565.095, F.S., relating to primary American source of supply licensure, are in no way violated by such imports.⁷
- “Vendors” are those “licensed to sell alcoholic beverages at retail only” and may not “purchase or acquire in any manner for the purpose of resale any alcoholic beverages from any person not licensed as a vendor, manufacturer, bottler, or distributor under the Beverage Law.”⁸

Three-Tier System

In the United States, the regulation of alcohol since the repeal of Prohibition has traditionally been based upon a “three-tier system.” The system requires separation of the manufacture, distribution, and sale of alcoholic beverages. The manufacturer creates the beverages, and the distributor obtains the beverages from the manufacturer to deliver to the vendor. The vendor makes the ultimate sale to the consumer.⁹ A manufacturer, distributor, or exporter may not be licensed as a vendor to sell directly to consumers.¹⁰

¹ Section 561.01(6), F.S., provides that the “The Beverage Law” means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

² See s. 561.14, F.S.

³ Section 561.02, F.S.

⁴ Section 563.01, F.S.

⁵ Section 561.14(1), F.S.

⁶ Section 561.14(2), F.S.

⁷ Section 561.01(5), F.S.

⁸ Section 561.14(3), F.S.

⁹ Section 561.14, F.S.

¹⁰ Section 561.22(1), F.S.

Generally, in Florida, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.¹¹ Licensed manufacturers, distributors, and registered exporters are prohibited from also being licensed as vendors.¹² Manufacturers are also generally prohibited from having an interest in a vendor and from distributing directly to a vendor.¹³

Tied House Evil Prohibitions

The three-tier system is deeply rooted in the perceived evils of the “tied house” in which a bar is owned or operated by a manufacturer or the manufacturer exercises undue influence over the retail vendor.¹⁴

Section 561.42, F.S., known as the “tied house evil” statute, regulates the permitted and prohibited relationships and interactions of manufacturers and distributors with vendors in order to prevent a manufacturer or distributor from having a financial interest, directly or indirectly, in the establishment or business of a licensed vendor, and to prevent a manufacturer or distributor from giving a vendor gifts, loans or property, or rebates.¹⁵ The prohibitions also apply to an importer, primary American source of supply,¹⁶ brand owner or registrant, broker, and sales agent (or sales person thereof).

The tied house evil statute also prohibits any distributor or vendor from receiving any financial incentives from any manufacturer. It further prohibits manufacturers or distributors from assisting retail vendors by gifts or loans of money or property or by the giving of rebates. These prohibitions do not, however, apply to any bottles, barrels, or other containers necessary for the legitimate transportation of such beverages, to advertising materials, or to the extension of credit,¹⁷ for liquors sold, made strictly in compliance with the provisions of s. 561.42, F.S.¹⁸

Section 561.42, F.S., also prohibits licensed manufactures and distributors from:

- Making further sales to vendors that the division has certified as not having fully paid for all liquors previously purchased;¹⁹
- Directly or indirectly giving, lending, renting, selling, or in any other manner furnishing to a vendor any outside sign, printed, painted, electric, or otherwise;²⁰
- Providing neon or electric signs, window painting and decalcomanias, posters, placards, and other advertising material herein authorized to be used or displayed by the vendor in the interior of his or her licensed premises;²¹ and

¹¹ Section 561.14(3), F.S. However, see the exceptions provided in ss. 561.221 and 565.03, F.S.

¹² Section 561.22, F.S.

¹³ Sections 563.022(14) and 561.14(1), F.S.

¹⁴ Erik D. Price, *Time to Untie the House? Revisiting the Historical Justifications of Washington’s Three-Tier System Challenged by Costco v. Washington State Liquor Control Board*, (June 2004) available at: http://www.lanepowell.com/wp-content/uploads/2009/04/pricee_001.pdf (last visited March 9, 2017).

¹⁵ Section 561.42(1), F.S.

¹⁶ See s. 564.045, F.S.

¹⁷ Section 561.42(2), F.S., permits distributors to extend credit for the sale of liquors to any vendor up to, but not including, the 10th day after the calendar week within which such sale was made.

¹⁸ Section 561.42(1), F.S.

¹⁹ Section 561.42(4), F.S.

²⁰ Section 561.42(10), F.S.

²¹ Section 561.42(12), F.S.

- Providing expendable retail advertising specialties, unless sold to the vendor at not less than the actual cost to the industry member who initially purchased them.²²

III. Effect of Proposed Changes:

CS/SB 388 creates s. 561.42(15), F.S., to exempt from the tied house evil prohibitions certain financial transactions negotiated at arm's length for fair market value between a manufacturer of malt beverages and a vendor licensed under the Beverage Law.

Such financial transactions:

- May not involve the sale or distribution of beer or malt beverages;
- May not limit the sale of beer or malt beverages from another manufacturer;
- Must be with a vendor who operates a theme park; and
- Must be registered with the division.

The bill defines a "theme park" as a complex comprised of at least 25 contiguous acres owned and controlled by the same business entity, which contains permanent exhibitions and a variety of recreational activities and has a minimum of 1 million visitors annually.²³

The bill provides an effective date of July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

²² Section 561.42(14)(a), F.S.

²³ This definition of "theme park" is identical to the definition of the term "theme park or entertainment complex" in s. 509.013(9), F.S., which relates to public lodging and public food services establishments.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Department of Business and Professional Regulations reports some potential difficulty in the regulatory monitoring of industry arrangements facilitated by the exemptions provided in the bill.²⁴

VIII. Statutes Affected:

This bill substantially amends section 561.42, Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Regulated Industries on March 15, 2017:

The committee substitute (CS):

- Does not amend s. 561.42(13), F.S., to prohibit the possession or use of wine and fortified wine coupons or cross-merchandising coupons.
- Amends s. 561.42(15), F.S., to require that, to be exempt from the tied-house evil law, an arms-length financial transaction between a manufacturer of beer or malt beverages and a vendor may not involve the sale or distribution of beer or malt beverages, may not limit the sale of beer or malt beverages from another manufacturer, must be with a vendor who operates a theme park, and must be registered with the division.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

²⁴ Department of Business and Professional Regulation, *2017 Agency Legislative Bill Analysis: SB 388*, (Feb. 17, 2017.) (On file with the Committee on Commerce and Tourism.)

By the Committee on Regulated Industries; and Senator Hutson

580-02477-17

2017388c1

A bill to be entitled

An act relating to the Beverage Law; amending s. 561.42, F.S.; providing an exemption from provisions relating to the tied house evil for specified financial transactions between a manufacturer of beer or malt beverages and a licensed vendor; providing conditions for the exception; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (15) is added to section 561.42, Florida Statutes, to read:

561.42 Tied house evil; financial aid and assistance to vendor by manufacturer, distributor, importer, primary American source of supply, brand owner or registrant, or any broker, sales agent, or sales person thereof, prohibited; procedure for enforcement; exception.—

(15) This section does not apply to a financial transaction negotiated at arm's length for fair market value between a manufacturer of beer or malt beverages, as defined in s. 563.01, and a vendor licensed under the Beverage Law if:

(a) Such financial transaction does not involve, either all or in part, the direct sale or distribution of beer or malt beverages between the manufacturer and licensed vendor;

(b) Such financial transaction does not limit, either directly or indirectly, the sale of alcoholic beverages from another manufacturer during or in connection with any sponsored events;

580-02477-17

2017388c1

(c) The vendor operates places of business where consumption on the premises is permitted, which premises are located within a theme park complex comprised of at least 25 contiguous acres owned and controlled by the same business entity and which contains permanent exhibitions and a variety of recreational activities and has a minimum of 1 million visitors annually; and

(d) The financial transaction is registered with the division with a summary of the transaction that includes a description of any sponsored events, activities, or cooperative advertising.

Section 2. This act shall take effect July 1, 2017.



The Florida Senate

Committee Agenda Request

To: Senator Bill Montford, Chair
Committee on Commerce and Tourism

Subject: Committee Agenda Request

Date: March 29, 2017

I respectfully request that **Senate Bill #388**, relating to Beverage Law, be placed on the:

- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda.

A handwritten signature in blue ink, appearing to read "Travis Hutson", is written above a horizontal line.

Senator Travis Hutson
Florida Senate, District 7

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-3-17

Meeting Date

388

Bill Number (if applicable)

Topic

Name

Gary R. Vledge

Job Title

Address

Street

641 Kelsey Court

City

Tallahassee

State

FL

Zip

32312

Phone

681-6788

Email

Gary.R.Vledge@senate.fl.gov

Speaking:

☐

For

☒

Against

☐

Information

Waive Speaking:

☐

In Support

☒

Against

(The Chair will read this information into the record.)

Representing

Miller Coors

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

1:30 1105

THE FLORIDA SENATE
APPEARANCE RECORD

4/3/17

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB 388

Bill Number (if applicable)

Topic Beverage Law

Name Brewster Bevis

Amendment Barcode (if applicable)

Job Title Senior Vice President

Address 516 N Adams St

Street

Tallahassee

FL

32301

City

State

Zip

Phone 224-7173

Email bbevis@aif.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/11)

THE FLORIDA SENATE
APPEARANCE RECORD

April 3, 2017

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

388

Bill Number (if applicable)

Topic Beverage Law

Name Melanie Becker

Job Title Director Government Relations

Address 1000 Universal Studios Plaza

Street

Orlando

City

FL

State

32819

Zip

Phone 407 30 2561

Email melanie.becker@universalorlando.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Universal Orlando

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

April 3, 2017
Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB 388
Bill Number (if applicable)

Topic Beverage LAW ✓

Name RICHARD TURNER

Amendment Barcode (if applicable)

Job Title GEN COUNSEL : V.P. GOVERNMENTAL RELATIONS

Address 230 S ADAMS
Street

Phone 850. 224. 2250

Tallahassee FL 32301
City State Zip

Email rturner@flga.org

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FLORIDA RESTAURANT & LODGING ASSOC

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/3/17
Meeting Date

SB 388
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Beer Sign Sponsorships

Name Scott Ashley

Job Title President & General Counsel

Address 215 S. Monroe St. #800-A

Street

City

Talla. FL

State

32301

Zip

Phone

(850) 681-8708

Email

scott@wsdfloida.com

Speaking: ☐ For ☒ Against ☐ Information.

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Wine & Spirits Distributors of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/4/17

Meeting Date

388
Bill Number (if applicable)

Topic Beer - Theme Parks Tied House Acceptance Amendment Barcode (if applicable)

Name Eric Criss

Job Title President

Address 110 S. Monroe
Street

Tallahassee FL 32301
City State Zip

Phone 850.491.3903

Email eric@floridabeer.org

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Beer Industry of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

April 3 2017
Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

388
Bill Number (if applicable)

Topic Beverage Law

Name Mac Stipanovich

Job Title Attorney

Address 46110 North Monroe Suite 1010
Street
Tallahassee FL 32301
City State Zip

Phone 850.681.4265

Email mac.stipanovich@bipc.com

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Universal Orlando

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

March 3 2017
Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

388
Bill Number (if applicable)

Topic Tied House Exception ✓

Name Mitch Rubin

Job Title Executive Director

Address 215 S. Monroe St. #340
Street

Tallahassee, FL 32301
City State Zip

Phone 950-224-2337

Email Mitch@fbwa.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Beer Wholesalers Assn

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

April 3, 2017
Meeting Date

388
Bill Number (if applicable)

Topic Beer / Malt Beverages

Name Josh Aubuchon

Job Title Attorney

Address 315 S. Calhoun St.
Street

Phone 224-7000

Tallahassee FL 32301
City State Zip

Email _____

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Brewers Guild

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

The Florida Senate COMMITTEE VOTE RECORD

COMMITTEE: Commerce and Tourism
ITEM: CS/SB 388
FINAL ACTION: Favorable
MEETING DATE: Monday, April 3, 2017
TIME: 1:30—3:30 p.m.
PLACE: 110 Senate Office Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: CS/SB 1348

INTRODUCER: Regulated Industries Committee and Senator Young

SUBJECT: Public Accountancy

DATE: March 31, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>McSwain</u>	<u>RI</u>	Fav/CS
2.	<u>Little</u>	<u>McKay</u>	<u>CM</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1348 extends the privilege of “practice mobility” to a public accountancy firm or certified public accountancy firm (CPA firm) that does not have an office in Florida or a Florida license to allow the firm to practice public accountancy in the state without a license, notice, or payment of any fee. Current law provides the privilege of practice mobility to out-of-state certified public accountants (CPAs), but not to CPA *firms*. To qualify for practice mobility, a firm must comply with the practice mobility requirements in current law, be enrolled in a peer review program, perform services through a Florida-licensed CPA, and lawfully perform services in a state where a CPA with practice mobility privileges has his or her principal place of business.

The bill:

- Updates the professional standards for CPAs to reference the current edition of the Uniform Accountancy Act, which is a model act designed to advance the goal of uniformity in accountancy practice.
- Revises the definition of “client” to provide that the term means a person who agrees with an accountant or accountant’s employer to receive professional service; and
- Authorizes the Florida Board of Accounting (board) in the Department of Business and Professional Regulation (DBPR) to discipline a licensed CPA who has been disciplined by the Public Company Accounting Oversight Board, which is a private-sector nonprofit corporation established by Congress in the Sarbanes-Oxley Act of 2002 to oversee the audits of public companies.

The bill has no fiscal impact on state government.

The effective date of the bill is July 1, 2017.

II. Present Situation:

The board is responsible for regulating and licensing more than 34,000 active and inactive CPAs and more than 5,400 accounting firms in Florida.¹ The Division of Certified Public Accounting provides administrative support to the nine-member board, which consists of seven CPAs and two laypersons.²

A certified public accountant is a person who holds a license to practice public accounting in this state under ch. 473, F.S., or an individual who is practicing public accounting in this state pursuant to the practice privilege granted in s. 473.3141, F.S.³

The practice of public accounting includes offering to the public the performance of services involving audits, reviews, compilations, tax preparation, management advisory or consulting services, or preparation of financial statements.⁴ To engage in the practice of public accounting, as defined in s. 473.302(8)(a), F.S., an individual or firm must be licensed pursuant to ss. 473.308 or 473.3101, F.S., and business entities must meet the requirements of s. 473.309, F.S.

Definitions

The terms “practice of,” “practicing public accountancy,” or “public accounting” mean:

- (a) Offering to perform or performing for the public one or more types of services involving the expression of an opinion on financial statements, the attestation as an expert in accountancy to the reliability or fairness of presentation of financial information, the utilization of any form of opinion or financial statements that provide a level of assurance, the utilization of any form of disclaimer of opinion which conveys an assurance of reliability as to matters not specifically disclaimed, or the expression of an opinion on the reliability of an assertion by one party for the use by a third party;
- (b) Offering to perform or performing for the public one or more types of services involving the use of accounting skills, or one or more types of tax, management advisory, or consulting services, by any person who is a certified public accountant who holds an active license, issued pursuant to this chapter, or who is authorized to practice public accounting pursuant to the practice privileges granted in s. 473.3141, including the performance

¹ Florida Department of Business and Professional Regulation, Fiscal Year 2013-2014 Annual Report, page 14, available at http://www.myfloridalicense.com/dbpr/os/documents/ProfessionsAnnualReportFY2015-2016_Final.pdf (last visited March 30, 2017).

² Section 473.303, F.S.

³ See s. 473.302(4), F.S. Section 473.3141, F.S., permits a person who does not have an office in Florida to practice public accountancy in this state without obtaining a license under ch. 473, F.S., notifying or registering with the board, or paying a fee if the person meets the required criteria.

⁴ Section 473.302(8), F.S.

of such services by a certified public accountant in the employ of a person or firm; or

(c) Offering to perform or performing for the public one or more types of service involving the preparation of financial statements not included within paragraph (a), by a certified public accountant who holds an active license, issued pursuant to this chapter, or who is authorized to practice public accounting pursuant to the practice privileges granted in s. 473.3141; by a firm of certified public accountants; or by a firm in which a certified public accountant has an ownership interest, including the performance of such services in the employ of another person. The board shall adopt rules establishing standards of practice for such reports and financial statements; provided, however, that nothing in this paragraph shall be construed to permit the board to adopt rules that have the result of prohibiting Florida certified public accountants employed by unlicensed firms from preparing financial statements as authorized by this paragraph.

A “client” is defined in s. 473.316, F.S., as any person, public officer, corporation, association, or other organization or entity, either public or private (person), who consults an accountant with the purpose of obtaining accounting services.

Uniform Accountancy Act

The Uniform Accountancy Act (UAA) is defined in s. 473.302(9), F.S., as “the Uniform Accountancy Act, Fourth Edition, dated December of 2007 and published by the American Institute of Certified Public Accountants and the National Association of State Boards of Accountancy.” The UAA is a model act designed to advance the goal of uniformity in accountancy laws, protect the public interest, facilitate consumer choice, and support the efficient operation of the capital markets.⁵ The current edition of the UAA is the Seventh Edition.⁶

Practice Mobility

Section 473.3141, F.S., provides the privilege of practice mobility to permit a CPA who is licensed in another state, but not licensed in Florida, to perform limited accounting services in Florida without obtaining a Florida license, notifying or registering with the board, or paying a fee. According to the Florida Institute of Certified Public Accountants, 49 states, the District of Columbia, and the U.S. Virgin Islands have adopted practice mobility statutes.

An out-of-state CPA who practices in Florida under practice mobility, as a condition for the privilege, consents to personal and subject matter jurisdiction and the disciplinary authority of the board. The CPA must comply with ch. 473, F.S., and the applicable board rules, and

⁵ See American Institute of CPAs, *What is the Uniform Accountancy Act?*, at: <http://www.aicpa.org/ADVOCACY/STATE/STATECONTACTINFO/UAA/Pages/default.aspx> (last visited March 30, 2017).

⁶ *Id.*

have a current, valid CPA license in another state that has adopted standards substantially equivalent to s. 5 of the Uniform Accountancy Act.⁷

The types of accounting services that an out-of-state CPA may provide are limited to the services described in s. 473.302(8)(b) and (c), F.S. If the CPA provides the opinion and attestation services described in s. 473.302(8)(a), F.S., the CPA must obtain a Florida license. An individual who provides accountancy services described in s. 473.302(8)(a), F.S., also must obtain a firm license as required by s. 473.3101, F.S.⁸

Practice mobility is limited to individuals; the privilege does not extend to firms.

Firm License Requirement

A CPA firm is a legal entity that is engaged in the practice of public accounting.⁹ A firm must hold a Florida license if it:

- Has an office in this state which performs the accounting services in s. 473.302(8)(a), F.S. (i.e., opinion and attestation services);
- Has an office in this state which uses the title “CPA,” “CPA firm,” or any other title, designation, words, letters, abbreviations, or device tending to indicate that it is a CPA firm; or
- Does not have an office in this state but performs the services described in s. 473.3141(4), F.S.,¹⁰ for a client having its home office in this state.¹¹

Each sole proprietor, partnership, corporation, or limited liability company¹² must apply for licensure with the board. An application for a firm license must be made upon the affidavit of a sole proprietor, general partner, shareholder, or member of the firm who is a CPA.

Peer and Quality Review

A CPA firm engages in peer reviews to protect the quality and effectiveness of the accounting, auditing, and attestation services provided by public accounting firms.¹³ Licensed public accounting firms that provide accounting services in s. 473.302(8)(a), F.S., must enroll in a peer review program.¹⁴ A peer review is the study, appraisal, or review by one or more independent certified public accountants of one or more aspects of a licensee’s professional work.¹⁵

⁷ Section 473.3141(3), F.S.

⁸ Section 473.3141(4), F.S.

⁹ Section 473.302(5), F.S.

¹⁰ Section 473.3141(4), F.S., permits a person who does not have a Florida license or an office in this state to practice as a CPA in Florida and perform the services identified in s. 473.302(8)(a), F.S., through a Florida-licensed firm.

¹¹ Section 473.3101(1)(a), F.S.

¹² Section 473.309, F.S., sets forth practice requirements for such business entities engaged in the practice of public accounting under s. 473.302(8)(a).

¹³ PRP Section 1000 AICPA Standards for Performance and Reporting on Peer Reviews (March 2013) page 5, available at: <http://www.aicpa.org/Research/Standards/PeerReview/DownloadableDocuments/PeerReviewStandards.pdf> (last visited March 30, 2017).

¹⁴ Section 473.3125(4), F.S.

¹⁵ Section 473.3125(1)(b), F.S.

The board has adopted the American Institute of Certified Public Accountants minimum standards for administering, performing, and reporting on peer reviews,¹⁶ and has established a peer review oversight committee to oversee and monitor implementation of the peer review requirement.¹⁷

A quality review is a study, appraisal, or review of one or more aspects of the professional work of an accountant in the practice of public accountancy which is conducted by a professional organization for the purpose of evaluating quality assurance required by professional standards, including a quality assurance review.¹⁸ The quality review is conducted by a “review committee” composed of any person or persons who are not owners or employees of the accountant or firm that is the subject of a quality review and who carry out, administer, or oversee a quality review.¹⁹

Public Company Accounting Oversight Board

The Public Company Accounting Oversight Board (PCAOB) is a private-sector nonprofit corporation established by Congress in the Sarbanes-Oxley Act of 2002 to oversee the audits of public companies in order to protect investors and the public interest.²⁰ The PCAOB has the authority to investigate and discipline registered public accounting firms and persons associated with those firms for noncompliance with the Sarbanes-Oxley Act of 2002, the rules of the PCAOB and the Securities and Exchange Commission, and other laws, rules, and professional standards governing the audits of public companies, brokers, and dealers.²¹

The board does not have the authority to discipline a CPA based solely on any disciplinary action taken by the PCAOB.

III. Effect of Proposed Changes:

Uniform Accountancy Act

The bill updates the definition of the Uniform Accountancy Act in s. 473.302(9), F.S., to reference the current Seventh Edition, dated May 2014.

Practice Mobility

The bill amends s. 473.3101(1)(c), F.S., to allow a firm or public accountancy firm to qualify for practice mobility and practice in this state without a license if it does not have an office in this state, but complies with the practice mobility requirements in s. 473.3141, F.S. To qualify for practice mobility, the firm must also:

- Comply with the practice requirements for business entities pursuant to s. 473.309, F.S.;
- Be enrolled in a peer review program pursuant to s. 473.3125(4), F.S.;

¹⁶ Section 473.3125(2), F.S., and Fla. Admin. Code Rule 61H1-39.002 (2016).

¹⁷ Section 473.3125(3), F.S., and Fla. Admin. Code Rule 61H1-39.004 (2016).

¹⁸ Section 473.316(1)(d), F.S.

¹⁹ *Id.*

²⁰ 15 U.S.C. s. 7211 (2010).

²¹ 15 U.S.C. 7202 and 15 U.S.C. s. 7211(c) (2010).

- Perform services through a CPA licensed under s. 473.308, F.S.; and
- Lawfully perform services in a state where an individual with practice privileges under s. 473.3141, F.S., has his or her principal place of business.

Definition of “Client”

The bill amends s. 473.316(1)(b), F.S., to revise the definition of “client” to provide that the term means a person who agrees with an accountant or accountant’s employer to receive professional services, rather than a person “who consults an accountant with the purpose of obtaining accounting services.”

Disciplinary Proceedings

The bill amends s. 473.323(1)(j), F.S., to authorize the board to discipline a licensee who has been disciplined by the PCAOB.

Effective Date

The bill provides an effective date of July 1, 2017.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 473.302, 473.3101, 473.316, and 473.323.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Regulated Industries on March 21, 2017:

The committee substitute amends s. 473.3101(1)(c), F.S., to replace the requirement that a firm must comply with s. 473.308, F.S., with a requirement that a firm must comply with s. 473.3141, F.S., in order to exercise the practice mobility privilege.

B. Amendments:

None.

By the Committee on Regulated Industries; and Senator Young

580-02660-17

20171348c1

A bill to be entitled

An act relating to public accountancy; amending s. 473.302, F.S.; revising a definition; amending s. 473.3101, F.S.; providing an exemption to the requirement for licensure of certain firms without an office in the state; amending s. 473.316, F.S.; revising a definition; amending s. 473.323, F.S.; providing that suspension or revocation of the right to practice before the Public Company Accounting Oversight Board is grounds for the imposition of penalties as provided by law; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (9) of section 473.302, Florida Statutes, is amended to read:

473.302 Definitions.—As used in this chapter, the term:

(9) "Uniform Accountancy Act" means the Uniform Accountancy Act, Seventh ~~Fourth~~ Edition, dated May 2014 ~~December 2007~~ and published by the American Institute of Certified Public Accountants and the National Association of State Boards of Accountancy.

However, these terms shall not include services provided by the American Institute of Certified Public Accountants or the Florida Institute of Certified Public Accountants, or any full service association of certified public accounting firms whose plans of administration have been approved by the board, to

Page 1 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02660-17

20171348c1

their members or services performed by these entities in reviewing the services provided to the public by members of these entities.

Section 2. Paragraph (c) of subsection (1) of section 473.3101, Florida Statutes, is amended to read:

473.3101 Licensure of firms or public accounting firms.—

(1) The following must hold a license issued under this section:

(c) 1. Any firm that does not have an office in this state but performs the services described in s. 473.3141(4) for a client having its home office in this state, unless it:

a. Complies with the requirements described in s. 473.309.

b. Is enrolled in a peer review program pursuant to s. 473.3125(4).

c. Performs services through an individual with practice privileges under s. 473.3141.

d. Lawfully performs services in a state where an individual with practice privileges granted under s. 473.3141 has his or her principal place of business.

2. The board shall define by rule what constitutes an office.

Section 3. Paragraph (b) of subsection (1) of section 473.316, Florida Statutes, is amended to read:

473.316 Communications between the accountant and client privileged.—

(1) For purposes of this section:

(b) A "client" is any person, public officer, corporation, association, or other organization or entity, either public or private, who agrees with an accountant or accountant's employer

Page 2 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02660-17

20171348c1

59 to receive professional services ~~who consults an accountant with~~
60 ~~the purpose of obtaining accounting services.~~

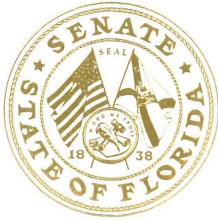
61 Section 4. Paragraph (j) of subsection (1) of section
62 473.323, Florida Statutes, is amended to read:

63 473.323 Disciplinary proceedings.—

64 (1) The following acts constitute grounds for which the
65 disciplinary actions in subsection (3) may be taken:

66 (j) Suspension or revocation of the right to practice
67 before any state or federal agency or the Public Company
68 Accounting Oversight Board.

69 Section 5. This act shall take effect July 1, 2017.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Health Policy, *Chair*
Appropriations Subcommittee on Pre-K - 12
Education, *Vice Chair*
Commerce and Tourism
Communications, Energy, and Public Utilities
Regulated Industries

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR DANA YOUNG

18th District

March 22, 2017

Senator Bill Montford, Chair
Senate Commerce and Tourism Committee
310 Knott Building
404 S. Monroe Street
Tallahassee, Florida 32399-1100

Dear Chairman Montford,

My Senate Bill 1348, Pubic Accountancy has been referred to your committee for a hearing. I respectfully request that this bill be placed on your next available agenda.

Thank you for your consideration of this request. If I need to provide you with more information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Dana Young".

Dana Young
State Senator – 18th District

cc: Todd McKay, Staff Director – Senate Commerce and Tourism Committee

REPLY TO:

- ☐ 1211 N. Westshore Blvd, Suite 409, Tampa, Florida 33607 (813) 281-5507
- ☐ 316 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5018

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

3-3-17

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1348

Bill Number (if applicable)

Topic Public Accountancy

Name Justin Thomas

Amendment Barcode (if applicable)

Job Title Director of Governmental Affairs

Address 325 W. College Ave

Phone 850-528-2209

Tallahassee FL 32301

City

State

Zip

Email thamesj@ficpa.org

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Institute of CPAs

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate COMMITTEE VOTE RECORD

COMMITTEE: Commerce and Tourism
ITEM: CS/SB 1348
FINAL ACTION: Favorable
MEETING DATE: Monday, April 3, 2017
TIME: 1:30—3:30 p.m.
PLACE: 110 Senate Office Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

Amended

A black and white copy of this document is not official

720

**STATE OF FLORIDA
DEPARTMENT OF STATE
Division of Elections**

I, Ken Detzner, Secretary of State,
do hereby certify that

Sonya Deen Hartley

is duly appointed a member of the

**Board of Directors,
Enterprise Florida,
Inc.**

for a term beginning on the Ninth day of September, A.D., 2016,
until the Thirtieth day of September, A.D., 2019 and is subject to
be confirmed by the Senate during the next regular session of the
Legislature.

*Given under my hand and the Great Seal of the
State of Florida, at Tallahassee, the Capital, this
the Thirtieth day of November, A.D., 2016.*



Ken Detzner

Secretary of State

DSDE 99 (3/03)

The original document has a reflective line mark in paper. Hold at an angle to view when checking.



RICK SCOTT
GOVERNOR

RECEIVED
16 SEP 15 AM 9:04
DIVISION OF ELECTIONS
SECRETARY OF STATE

September 9, 2016

Kenneth W. Detzner
Secretary of State
State of Florida
R. A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

Dear Secretary Detzner:

Please be advised I have made the following appointment under the provisions of Section 288.901, Florida Statutes:

Mrs. Sonya Deen Hartley
300 Jim Moran Boulevard
Deerfield Beach, Florida 33442

as a member of the Board of Directors, Enterprise Florida, Inc., succeeding Christopher Kise, subject to confirmation by the Senate. This appointment is effective September 9, 2016, for a term ending September 30, 2019.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Scott".

Rick Scott
Governor

RS/aa

OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

RECEIVED
DEPARTMENT OF
2016 NOV 22 PM 3:21

STATE OF FLORIDA

County of Broward

OFFICE OF
STATE
ELECTIONS

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Board Member - Enterprise Florida

(Title of Office)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

[Signature]
Signature

Sworn to and subscribed before me this 12 day of OCTOBER, 2016.

[Signature]
Signature of Officer Administering Oath or of Notary Public

LINDA M. SOCCI
Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known ☒ OR

Produced Identification ☐

Type of Identification Produced _____



ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address: ☐ Home ☒ Office

100 Jim Moran Blvd.

Street or Post Office Box

Deerfield Beach, FL 33442

City, State, Zip Code

Sonya Deen Hartley

Print name as you desire commission issued

[Signature]
Signature

COMMITTEE VOTE RECORD – EXECUTIVE APPOINTMENT

COMMITTEE: Commerce and Tourism
NAME: Deen Hartley, Sonya
BOARD: Board of Directors, Enterprise Florida, Inc.
FINAL ACTION: Recommend Confirm
MEETING DATE: Monday, April 3, 2017
TIME: 1:30—3:30 p.m.
PLACE: 110 Senate Office Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

720

**STATE OF FLORIDA
DEPARTMENT OF STATE
Division of Elections**

I, Ken Detzner, Secretary of State,
do hereby certify that

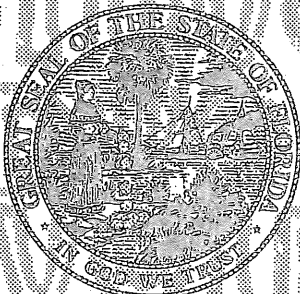
Belinda M. Keiser

is duly appointed a member of the

**Board of Directors,
Enterprise Florida,
Inc.**

for a term beginning on the Ninth day of September, A.D., 2016,
until the Thirtieth day of September, A.D., 2019 and is subject to
be confirmed by the Senate during the next regular session of the
Legislature.

*Given under my hand and the Great Seal of the
State of Florida, at Tallahassee, the Capital, this
the Twenty-Sixth day of October, A.D., 2016*



Ken Detzner

Secretary of State



RICK SCOTT
GOVERNOR

RECEIVED

16 SEP 15 AM 9:04

DIVISION OF ELECTIONS
SECRETARY OF STATE

September 9, 2016

Kenneth W. Detzner
Secretary of State
State of Florida
R. A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

Dear Secretary Detzner:

Please be advised I have made the following reappointment under the provisions of Section 288.901, Florida Statutes:

Ms. Belinda M Keiser
1900 West Commercial Boulevard
Suite 100
Fort Lauderdale, Florida 33309

as a member of the Board of Directors, Enterprise Florida, Inc., subject to confirmation by the Senate. This appointment is effective September 9, 2016, for a term ending September 30, 2019.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Scott".

Rick Scott
Governor

RS/aa

OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

STATE OF FLORIDA

County of Broward

RECEIVED
16 OCT 25 PM 12:27
DIVISION OF ELECTIONS
SECRETARY OF STATE

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Board of Directors, Enterprise Florida, Inc.

(Title of Office)

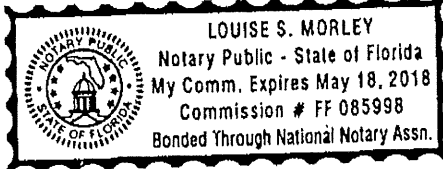
on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

Belinda M. Keiser

Signature

Sworn to and subscribed before me this 5 day of OCTOBER, 2016.



Louise S. Morley
Signature of Officer Administering Oath or of Notary Public

Louise S. Morley
Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known ☒ OR Produced Identification ☐

Type of Identification Produced _____

ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address: ☐ Home ☒ Office

1900 W. Commercial Blvd., Suite 180

Street or Post Office Box

Fort Lauderdale, FL 33309

City, State, Zip Code

Belinda M. Keiser

Print name as you desire commission issued

Belinda M. Keiser

Signature

COMMITTEE VOTE RECORD – EXECUTIVE APPOINTMENT

COMMITTEE: Commerce and Tourism
NAME: Keiser, Belinda
BOARD: Board of Directors, Enterprise Florida, Inc.
FINAL ACTION: Recommend Confirm
MEETING DATE: Monday, April 3, 2017
TIME: 1:30—3:30 p.m.
PLACE: 110 Senate Office Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

CourtSmart Tag Report

Room: EL 110

Case No.:

Caption: Senate Committee on Commerce and Tourism

Type:

Judge:

Started: 4/3/2017 1:33:36 PM

Ends: 4/3/2017 2:31:55 PM **Length:** 00:58:20

1:33:37 PM Meeting called to order
1:33:42 PM Roll called
1:33:58 PM Quorum present
1:34:54 PM Tab 3 Senate Bill 1040
1:35:02 PM Montford Calls on Sen. Artiles
1:35:11 PM Sen. Artiles explains the bill
1:37:05 PM Sen Montford calls for questions
1:37:12 PM Sen Montford takes up amendment 694330
1:37:24 PM Sen Montford calls on Sen. Gibson
1:37:30 PM Sen. Gibson Speaks
1:38:38 PM Sen. Gibson withdraws her amendment
1:38:44 PM Sen. Montford notes withdrawal of amendment 694330
1:38:59 PM Sen. Montford calls for questions/debate
1:39:08 PM Sen. Gainer speaks
1:39:18 PM Sen. Montford speaks
1:39:26 PM Sen. Montford calls on Josh Aubuchon of FL Brewers Guild
1:39:49 PM Josh Aubuchon speaks against
1:40:44 PM Sen Montford calls on Jonathan Rees
1:40:53 PM Johnathan Rees of Amheiser-Busch waives in supp
1:41:03 PM Calls on Natalie King of Pepin Distributing Company
1:41:07 PM Natalie King waives in support
1:41:11 PM Melissa Ramba waives in support on behalf of the Florida Retail Federation
1:41:25 PM Richard turner waives in support on behalf of FL Restaurants and Lodging Association
1:41:31 PM Scott Ashley speaks for Wine and Spirits Distributors of FLorida
1:42:05 PM Scott Ashley speaks against bill
1:42:27 PM Sen. Latvala raises question
1:42:48 PM Speaker Scott Ashley answers
1:43:23 PM Sen. Latvala raises another questions
1:43:41 PM Sen Latvala speaks
1:43:51 PM Sen Montford Calls on Beavis
1:44:02 PM Brewster Bevis waives in support of the bill on behalf of Associated Industries of Florida
1:44:05 PM Ron Pierce waives in support on behalf of Suncoast Beverage Sales
1:44:18 PM Mitch Rubin on behalf of Florida Beer Wholesalers Association waives in support
1:44:40 PM Gary Rutledge on behalf of Miller Coors waives in Opposition
1:44:46 PM Natalie King on behalf of Pepin Distributing Co. waives in support again
1:45:08 PM No debate on bill
1:45:14 PM Sen Montford calls on Sen. Artiles to close
1:45:46 PM Roll called
1:45:50 PM SB 1040 reported favorably
1:46:45 PM Tab 7
1:46:52 PM Montford calls on Sen. Hutson
1:47:09 PM Sen Hutson speaks on SB 388
1:47:47 PM Sen Montford calls for questions
1:48:00 PM Sen Montford calls on Josh Abuchon from FL Brewers guild
1:48:44 PM Sen Montford calls Mitch Rubin
1:48:51 PM Mitch Rubin waives in opposition on behalf of FL Beer Wholesalers Association
1:49:10 PM Mac Stipanovich of Universal Orlando waives in support
1:49:38 PM Eric Criss of Beer Industry of Florida speaks on bill
1:50:58 PM Scott Ashley waives in Opposition on behalf of Wine and Spirits Distributors of Florida
1:51:10 PM Richard Turner waives in Support on behalf of the Florida Retail Federation
1:51:16 PM Melanie Becker on behalf of Univeral Orlando waives in support
1:51:22 PM Brewster Beavis waives in Support on behalf of Associated Industries of Florida

1:51:29 PM Gary Rutledge on behalf of Miller Coors waives in opposition
 1:51:38 PM Sen Montford calls for debate
 1:51:43 PM Sen. Hutson recognized to close
 1:51:49 PM Sen Hutson waives to close
 1:51:54 PM Roll called
 1:52:03 PM Bill sb 388 reported favorably
 1:52:39 PM Tab 8
 1:52:42 PM Sen Montford calls on Sen Young
 1:52:50 PM Sen. Young explains CS/SB 1348
 1:53:27 PM Sen Latvala raises a question
 1:54:13 PM Sen Montford calls on Justin Thames
 1:54:22 PM Justin Thames waives in support on behalf on FL institute of CPAs
 1:54:37 PM no debate
 1:54:38 PM roll called
 1:54:46 PM CS/SB 1348 reported favorably
 1:55:03 PM TAB1
 1:55:09 PM Sen Steube called on to explain bill
 1:56:31 PM No questions on amendment
 1:56:35 PM no debate
 1:56:38 PM amendment passes
 1:56:45 PM Call for questions on Bill
 1:56:49 PM Sen. Gibson raises question
 1:57:05 PM Sen. Steube called on to answer question
 1:57:40 PM Sen. Gibson raises another question
 1:57:49 PM Sen. Steube answers
 1:59:11 PM Sen. Gibson raises additional question
 1:59:20 PM Sen. Steube responds
 2:00:09 PM Sen Gibson poses additional question
 2:00:20 PM Sen steube responds
 2:00:25 PM Sen. Young raises question
 2:00:31 PM Sen. Steube responds
 2:00:57 PM Sen Youn raises second question
 2:01:07 PM Sen. Steube responds
 2:02:24 PM Sen. Young poses another question
 2:02:35 PM Sen. Steube responds
 2:02:49 PM Sen. Gibson has another question
 2:02:58 PM Sen. Steube responds
 2:03:18 PM Montford calls for further questions
 2:03:25 PM Carolyn Johnson of Chamber of Commerce waives in Support
 2:03:37 PM Jason Unger on behalf of distillers guild speaks
 2:04:43 PM Sen. Gibson raises a question
 2:04:50 PM Jason Unger responds
 2:05:14 PM Sen Montford calls on Ari Bargil representing Institute for Justice
 2:05:22 PM On behalf of the Institute for Justice, Ari Bargil waives in support
 2:05:30 PM Montford calls on Scott Ashley
 2:05:37 PM Scott Ashley speaks on behalf of Wine and Spirits Distributors of Florida in opposition
 2:07:16 PM Sen Montford calls on Richard Turner
 2:08:15 PM On behalf of FL restaurants and lodging, Richard Turner waives in support
 2:08:24 PM Sen. Montford calls for debate
 2:08:31 PM Sen. Latvala speaks
 2:09:49 PM Roll called
 2:09:56 PM Bill SB 166 is reported favorably
 2:10:18 PM Tab 6
 2:10:21 PM Sen. Montford calls on Senator Powell to explain 1620
 2:10:54 PM call for questions on bill
 2:11:04 PM Sen. Latvala questions Sen. Powell
 2:11:13 PM Powell responds
 2:12:02 PM Sen Montofrd calls on Jared Ross
 2:12:11 PM Jared Ross waives in support on behalf of FL Credit Union Assoc.
 2:12:24 PM Roll Called
 2:12:35 PM SB 1620 is reported favorably
 2:12:47 PM Tab 2 SB 490

2:13:03 PM	Sen. Hutson recognized to explain bill
2:13:32 PM	Sen. Young raises question
2:13:45 PM	Sen. Hutson responds
2:14:09 PM	Sen. Young raises second question
2:14:19 PM	Sen. Hutson responds
2:15:09 PM	Sara Busk waives in support on behalf of TechNet
2:15:15 PM	Melissa Ramba waives in support on behalf of Florida Retail Federation
2:15:25 PM	Sen. Montford calls for debate
2:15:33 PM	Sen. Gibson speaks
2:16:59 PM	Sen. Montford calls for further debate
2:17:12 PM	Sen. Hutson speaks
2:17:34 PM	Sen. Hutson closes on bill
2:17:40 PM	Roll called
2:17:44 PM	SB 490 reported favorably
2:18:46 PM	TAB 5 SB 1482
2:19:09 PM	Sen. Latvala recognized to explain his bill
2:20:03 PM	Call for questions
2:20:06 PM	No questions
2:20:11 PM	Anthoni DiMaco for FL Bankers Association waives in opposition
2:20:39 PM	No debate
2:20:42 PM	Roll called
2:20:52 PM	SB 1482 reported favorably
2:21:05 PM	Tab 9 & 10
2:21:49 PM	Sen. Montford explains appointments
2:22:48 PM	No debate
2:22:52 PM	No appearance forms
2:22:57 PM	Sen. Latvala moves to confirm
2:23:05 PM	Roll Called
2:23:19 PM	Confirmation of appointees recommended favorably
2:25:01 PM	5 minute recess is called
2:28:15 PM	Meeting called back to order
2:28:19 PM	Sen. Montford calls on Sen. Lee
2:28:26 PM	Sen. Lee explains the bill
2:29:31 PM	Montford calls for questions on bill
2:29:38 PM	Montford calls on speaker Ari Bargil with Institute for Justice
2:29:58 PM	Ari Bargil with Insititute for Justice speaks in support of the bill
2:30:35 PM	Sen. Montford calls for debate
2:30:41 PM	Sen. Lee recognized to close
2:31:22 PM	Roll Called
2:31:28 PM	SB 1136 reported favorably
2:31:43 PM	Meeting adjourned



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Ethics and Elections, *Chair*
Health Policy, *Vice Chair*
Appropriations Subcommittee on Health and
Human Services
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Commerce and Tourism

SELECT COMMITTEE:

Joint Select Committee on Collective Bargaining

JOINT COMMITTEE:

Joint Legislative Auditing Committee

SENATOR KATHLEEN PASSIDOMO
28th District

April 3, 2017

The Honorable Bill Montford, Chair
Committee on Commerce and Tourism
310 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Montford:

I respectfully asked to be excused from the Committee on Commerce and Tourism meeting scheduled for April 3, 2017. I will be presenting bills in three other committees.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Passidomo".

A handwritten signature in black ink, appearing to read "Bill Montford".

cc: Todd McKay, Staff Director
Gabriela Denton, Administrative Assistant

REPLY TO:

- ☐ 3299 East Tamiami Trail, Suite 203, Naples, Florida 34112 (239) 417-6205
- ☐ 318 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5028

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore